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C A S E

PRESENTED ON THE PART OF THE

GOVERNMENT OF HER BRITANNIC MAJESTY

TO THE

TRIBUNAL OF ARBITRATION

CONSTITUTED UNDER ARTICLE I OF THE TREATY CONCLUDED
AT WASHINGTON ON THE 8th MAY, 1871, BETWEEN HER
BRITANNIC MAJESTY AND THE UNITED STATES
OF AMERICA.

1872?

GENERAL CONTENTS.

THE Case now presented to the Arbitrators on the part of the Government of Her Britannic Majesty comprehends a statement of the facts which that Government regards as material to a just adjudication on the Claims of the United States, and of some general propositions on which it intends to rely, believing them to be in accordance with the principles of international law and the practice of nations.

The contents of the Case are as follows:—

<u>I. A Statement of the Matter referred to the Arbitrators, as it is understood by Her Britannic Majesty's Government</u>	Part I, pages 1—3
<u>II. An Introductory Statement of the events which attended and followed the commencement of the Civil War in America, and of the course pursued by Great Britain and the other Maritime Powers in relation to the War, and particularly as to the reception of belligerent vessels of war into their ports and waters</u> ...	Part II, pages 4—22
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The Appendix to the Case consists of Four Volumes, the contents of which are as follows:—

Vol. I. Correspondence relating to the Florida, Alabama, Georgia, and Shenandoah.

Vol. II. Correspondence relating to the Sumter, Nashville, Georgiana, Phantom, Southerner, Alexandria, and other vessels respecting which representations were made by the Government of the United States to that of Her Britannic Majesty during the Civil War.

Vol. III. Papers relating to the commencement of the Civil War; Proclamations and Regulations issued by the Governments of Great Britain and other countries during that war; the Neutrality Laws of the United States and of Great Britain; Judgments delivered by the British Court of Exchequer and by the Supreme Court of the United States; Correspondence between the Government of the United States and the Governments of Spain and Portugal relative to the fitting out of privateers in the ports of the first-named country; and the Report of the Royal Commission appointed to inquire into the character, working, and effect of the British Laws for the enforcement of Neutrality.

Vol. IV. General Correspondence on the "Alabama Claims," presented to Parliament.

PART I.

Part I.

Introductory statement.

Statement of the Matter referred to the Arbitrators, as it is understood by the Government of Her Britannic Majesty.

THE Government of Her Britannic Majesty, in proceeding to state, for the information of the Tribunal of Arbitration, the facts and arguments which appear material to a just adjudication on the claims to be presented by the Government of the United States, finds it necessary to remark, in the first place, that no definite and complete statement of those claims, with the grounds on which they are founded, has ever been furnished by the latter Government.

A general definition of them is, however, supplied by the terms of the Reference to Arbitration contained in Articles I to XI of the Treaty of Washington (8th May, 1871), coupled with the previous correspondence between the two Governments.

The parts of the Treaty to which Her Britannic Majesty's Government particularly refers are the following:—

“ARTICLE I.—Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the Alabama claims; and whereas Her Britannic Majesty has authorized her High Commissioners and Plenipotentiaries to express in a friendly spirit the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels: now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty's Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the Alabama claims, shall be referred to a Tribunal of Arbitration, to be composed of five Arbitrators, to be appointed in the following manner:—

* * * * *

“ARTICLE II.—The Arbitrators shall meet at Geneva, in Switzerland, at the earliest convenient day after they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of Her Britannic Majesty and the United States respectively. All questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

* * * * *

“ARTICLE VI.—In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case:—

“Rules.

“A neutral Government is bound—

“First; To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable grounds to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

“Secondly; Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

“Thirdly; To exercise due diligence in its own ports or waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

“Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of

Part I.

Introductory statement.

principles of international law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees that, in deciding the questions between the two countries arising out of these claims, the Arbitrators should assume that Her Majesty's Government had undertaken to set upon the principles set forth in these rules. And the High Contracting Parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them.

"ARTICLE VII.—The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides. It shall be made in writing and dated, and shall be signed by the arbitrators who may assent to it. The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfil any of the duties set forth in the foregoing three rules, or recognized by the principles of international law not inconsistent with such rules, and shall certify such fact as to each of the said vessels. In case the Tribunal find that Great Britain has failed to fulfil any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it; and in such case the gross sum so awarded shall be paid in coin by the Government of Great Britain to the Government of the United States at Washington within twelve months after the date of the award.

* * * * *

"ARTICLE X.—In case the Tribunal finds that Great Britain has failed to fulfil any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure as to each vessel, according to the extent of such liability as decided by the Arbitrators.

* * * * *

"ARTICLE XI.—The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration and of the Board of Assessors, should such board be appointed, as a full, perfect and final Settlement of all the claims hereinbefore referred to; and further engage that every such claim, whether the same may or may not have been presented to the notice of, made, preferred, or laid before the Tribunal or Board, shall, from and after the conclusion of the proceedings of the Tribunal or Board, be considered and treated as finally settled, barred, and thenceforth inadmissible."

The second of the above "Rules" is understood by Her Majesty's Government as prohibiting the use of the ports or waters of the neutral for the renewal or augmentation of military supplies or arms, only when such supplies or arms are for the service of a vessel cruising or carrying on war, or intended to cruise or carry on war, against either belligerent; and as not prohibiting any sale of arms or other military supplies in the ordinary course of commerce; and Her Majesty's Government have no reason to believe that it is otherwise understood by the Government of the United States.

The claims, then, which are referred to the Tribunal, are "claims growing out of the acts of" certain vessels, in respect of which the Government of the United States alleges that Great Britain has failed to fulfil some international duty. The duties specifically mentioned, and to which the attention of the Tribunal is directed, are duties to be performed by a "neutral Government," as such. As to each vessel separately, the Tribunal is to determine whether there has or has not been any failure of duty on the part of Her Majesty's Government. If, in the judgment of the Tribunal, there has been such a failure in respect of any specified vessel or vessels, the Tribunal may adopt, at its discretion, either of two courses. It may, on the one hand, award such a gross sum as the Arbitrators may deem just to be paid by Great Britain, in full satisfaction of all well-founded claims on the part of the United States, "growing out of the acts" of the vessel or vessels in respect of which there has been a failure of duty; or, on the other hand, it may content itself with deciding, as to each or any vessel in respect of which there has been a failure of duty, the measure or extent of the liability which on general principles may justly be deemed to have been incurred by such failure. In the event of the second course being chosen, the office of examining and adjudicating on the validity of particular claims "growing out of the acts" of the specified vessel or vessels, and of fixing the sum or sums of money to be paid on account of each, according to the measure of liability laid down by the Tribunal, is remitted to a Board of Assessors, for constituting which provision is made by Article X.

In effect, therefore, the Tribunal is called upon to determine whether, in respect of certain vessels not designated by name, the Government of Great Britain, as a neutral Power, has made default in the performance of any international obligation due from that Power to the United States. Should this question be answered in the affirmative, the Tribunal is then to form a judgment on the extent of the liability, if any, incurred by the default, and is either to award a gross sum in satisfaction of all just claims, or to define the general limits of the liability as to each vessel, for the guidance of the Assessors. The claims which may be presented to the Tribunal, and to which alone it is to have regard in

making its award, are claims "growing out of the acts" of the vessels (if any) in respect of which a failure of duty shall be proved.

The vessels to which this inquiry relates are (as has been already remarked), not designated in the Treaty by name; they are only indicated by reference to a particular class of claims, to which their "acts" are said to have given rise. These claims are assumed in the Treaty to have become familiar to both Governments, in the course of the correspondence which has passed between them, under the general title of the "Alabama Claims." They are assumed to form a distinct class, well known, and easily separable from the mass of miscellaneous claims arising from other sources, for which latter a different mode of settlement is provided by Articles XII to XVII of the Treaty. The Alabama was a vessel which sailed from the port of Liverpool, under circumstances which will be stated below, and was afterwards employed as a cruiser in the naval service of the Confederate States. The phrase "The Alabama Claims" is understood by Her Britannic Majesty's Government to embrace all claims "growing" (to use the language of the Treaty), "out of acts committed by" this vessel, and by other vessels which are alleged to have been procured, like the Alabama, from British ports during the war, and under circumstances more or less similar, and to be confined to such claims. The only vessels in respect of the acts of which claims have been made by the Government of the United States on that of Her Britannic Majesty, either during the Civil War, or in the six years which have elapsed since its termination, are the Alabama herself, and the vessels formerly known as the Florida, Georgia, and Shenandoah. On one occasion, indeed, since the close of the war, namely, in a despatch dated 27th August, 1866, and communicated by the Minister of the United States to Her Majesty's Government, mention was made of a vessel called the Sumter, as one of those in respect of which the Government of the United States conceived itself to have claims against Great Britain. But no claims in respect of the Sumter were in fact included in the detailed list which was inclosed in that despatch and then presented to Her Britannic Majesty's Government, nor have any such claims been presented before or since. Nor is Her Britannic Majesty's Government aware of any grounds on which such claims could be made with any show of reason. Her Britannic Majesty's Government is therefore entitled to assume that the claims referred to the Tribunal are claims "growing out of the acts" of the four vessels above-named, or of some or one of them.

The circumstances under which these four vessels respectively sailed from British ports, and came into the possession of the Government of the Confederate States, and the considerations which the Tribunal will be called upon to apply to them respectively; are, as will hereafter be seen, dissimilar in very material respects. Her Britannic Majesty's Government, however, maintains that in respect of none of them was there, on its part, any failure in the discharge of international obligations rendering Great Britain justly liable to make reparation to the United States for acts committed by them, or by the persons in whose possession they respectively were, out of the jurisdiction of the British Crown.

For the guidance of the Tribunal in adjudicating on the questions submitted to it, three "rules" have been laid down, which, by agreement between the two Governments, are to be taken as applicable to the case, and to be reciprocally observed in future by Great Britain and the United States. These rules purport to lay down certain specific obligations incumbent in time of war on neutral Powers. By them, and by such principles of international law not inconsistent with them as the Tribunal shall determine to have been applicable to the case, the Tribunal is to be governed. Her Britannic Majesty's Government has declined to give its assent to these rules as a statement of principles of international law which were actually in force at the time when the claims now submitted to arbitration arose. But by Her Britannic Majesty's Government, as well as that of the United States, they are believed and intended to be not at variance but in substantial accord with the general principles of that system by which both Powers alike hold themselves bound, which they alike desire to preserve sacred and inviolate, and from the dominion of which neither of them proposes to withdraw the questions that have unhappily arisen between them. Accepting the rules sincerely and without reserve, in the manner expressed in the VIth Article of the Treaty, Her Britannic Majesty's Government will assume (as is, indeed, clearly implied in the terms of that Article) that they are to be construed with reference to, and in connection with, that long-established body of international rules and usages which was and still is common to Great Britain and the United States with other civilized peoples.

Part II.

Introductory statement.

PART II.

Statement of Events which attended and followed the Commencement of the Civil War, and of the Course pursued in relation to it by Great Britain and other Maritime Powers.

Before approaching the cases of the vessels to which the claims in question are understood to relate, it is necessary to state concisely the previous course of events, and to place clearly before the Tribunal the course of conduct which had been pursued during the earlier period of the war by Her Britannic Majesty's Government.

General Propositions.

The following propositions are believed by Her Majesty's Government to be in accordance with the principles of international law and the practice of nations:—

1. It is the duty of a neutral Government, in all matters relating to the war, to act impartially towards the belligerent Powers; to concede to one what it concedes to the other; to refuse to one what it refuses to the other.

2. This duty, inasmuch as it flows directly from the conception of neutrality, attends the relation of neutrality wherever it exists, and is not affected by considerations arising from the political relation which before the war the belligerents may have sustained to one another.

3. Maritime war being carried on by hostilities on the high seas, and through the instrumentality (ordinarily) of vessels commissioned by public authority, a neutral Power is bound to recognize, in matters relating to the war, commissions issued by each belligerent, and captures made by each, to the same extent and under the same conditions as it recognizes commissions issued and captures made by the other.

4. Where either belligerent is a community or body of persons not recognized by the neutral Power as constituting a sovereign State, commissions issued by such belligerent are recognized as acts emanating, not indeed from a sovereign Government, but from a person or persons exercising *de facto*, in relation to the war, the powers of a sovereign Government.

The Civil War.

In the year 1861 a civil war broke out in the United States. Seven States—South Carolina, Florida, Mississippi, Alabama, Georgia, Louisiana, and Texas—had one by one formally renounced their allegiance to the Union, and declared themselves independent. They had formed themselves into a separate Confederation, under the title of the "Confederate States of North America;" had adopted a Federal Constitution, instituted a Federal Legislature, Executive, and Judiciary; taken measures to raise an army of 100,000 men, and appropriated sums of money amounting to 2,029,485 dollars (equal to more than 10,000,000 francs) towards the creation of a navy. This series of events commenced in November 1860, and was completed before the end of March 1861, at which time the Confederate Legislature had been for more than a month in session. In April 1861 hostilities commenced between the Government of the Union and the Confederate States of the South; and shortly afterwards four other States—Virginia, North Carolina, Tennessee, and Arkansas—likewise separated themselves from the Union and joined the Confederacy, which thus embraced a vast and compact territory, extending from the River Potomac to the confines of the Republic of Mexico.

The war began with the attack and bombardment by the Confederates of Fort Sumter, a fort situate at the mouth of Charleston Harbour, and held by a small garrison of United States' troops. On the reduction of this place, which was speedily effected, followed within a few days the seizure, by Virginian militia, of Harper's Ferry, an important military arsenal at the confluence of the Rivers Shenandoah and Potomac, and of the great naval arsenal and shipbuilding yards of Norfolk, where the James River discharges itself into Chesapeake Bay. Fort Sumter surrendered on the 13th April. On the 15th the

President of the United States issued a Proclamation calling out militia to the number of 75,000 men.* On the 17th, Mr. Jefferson Davis (who had been elected in February to the office of President of the Confederate States) published a counter-Proclamation, inviting applications for letters of marque and reprisal to be granted under the seal of the Confederate States against ships and property of the United States and their citizens.† By a further Proclamation, dated the 19th April, President Lincoln, after referring to the proposed issue of letters of marque, declared that he had deemed it advisable to set on foot a blockade of the ports within the seven States then in revolt, "in pursuance of the laws of the United States and of the law of nations in such case provided."‡

" For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave, any of the said ports, she will be duly warned by the Commander of one of the said blockading vessels, who will endorse on her register the fact and date of such warning; and if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as prize as may be deemed advisable."

By another Proclamation, dated the 27th April,§ the blockade was declared to be extended to the ports of Northern Virginia.

On the publication of these Proclamations, Lord Lyons, then Her Britannic Majesty's Envoy at Washington, requested of the Government of the United States that he might be furnished, for the guidance of British merchants, with definite information as to the manner in which the blockade was to be enforced. He was assured, in reply, by Mr. Seward, then United States' Secretary of State, that it would be conducted as strictly according to the recognized rules of public law, and with as much liberality towards neutrals, as any blockade ever was by a belligerent.||

To the Minister of the Queen of Spain Mr. Seward wrote as follows :—||

" Sir,
" In acknowledging the receipt of your note of the 30th ultimo, on the subject of the blockade of the ports in several of the States, I deem it proper to state for your further information :—

" 1. That the blockade will be strictly enforced upon the principles recognized by the law of nations.

" 2. That armed vessels of neutral States will have the right to enter and depart from the interdicted ports.

" 3. That merchant-vessels in port at the time the blockade took effect will be allowed a reasonable time for departure.

" I avail, &c.

(Signed) " W. H. SEWARD."

The blockade declared by the foregoing Proclamations was actually instituted, as to the ports within the State of Virginia, on the 30th April;¶ and was extended to the principal ports on the seaboard of the other Confederate States before the end of May. A considerable number of neutral ships and cargoes were captured for breaches or alleged breaches of blockade, some at or near the mouths of blockaded ports, others on the high seas. Vessels or cargoes so captured were carried before, and condemned by, Courts of the United States exercising jurisdiction in matters of prize; and the validity of the sentences thus pronounced was upheld by the Supreme Court of the United States, which is the highest Court of Appeal in such matters. Mr. Justice Grier, in delivering the judgment of the Court on this question said :—

" To legitimate the capture of a neutral vessel or property on the high seas, a war must exist *de facto*, and the neutral must have a knowledge or notice of the intention of one of the parties belligerent to use this mode of coercion against a port, city, or territory in possession of the other."

In a subsequent part of the same judgment he added :—

" Whether the President, in fulfilling his duties as Commander-in-chief in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided by him; and this Court must be governed by the decisions and acts of the Political Department of the Government, to which this power was entrusted. He must determine what degree of force the crisis demands. The Proclamation of the blockade is itself official and conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure under the circumstances peculiar to the case. The correspondence of Lord Lyons with the Secretary of State admits the fact, and concludes the question."

* Appendix, vol. iii, p. 2.

† Ibid., p. 4.

‡ Ibid., p. 6.

§ Ibid., p. 9.

|| Ibid., pp. 10, 11.

¶ Ibid., p. 10.

Part II.

Introductory statement.

On the 3rd May, 1861, President Lincoln directed that the naval force of the United States should be increased by the enlistment of 18,000 additional seamen, and their land forces by fifty additional regiments, partly of regular troops and partly of volunteers, with an aggregate maximum of 64,748 men.

It is needless to refer particularly to the subsequent history of the war waged on the American Continent. It is well known that the forces of the United States, attempting to penetrate into Virginia, encountered a severe defeat; that great armies were raised on both sides; that hostilities were carried on over an immense area, with varying fortune, for nearly four years; and that the contest terminated, in 1865, in the complete reconquest of the eleven Confederate States, which, after being held for a considerable time under military control, were finally readmitted to their original position in the Union.

The events stated above are matters of general notoriety, recorded in the history of the period.

On the 30th April, 1861, Mr. Jefferson Davis, as President of the Confederate States, addressed to the Congress of those States a Message, which contained the following passage:—

“ The operations of the Navy Department have been necessarily restricted by the fact that sufficient time has not yet elapsed for the purchase or construction of more than a limited number of vessels adapted for the public service. Two vessels have been prepared and manned, the Sumter and McRae, and are now being prepared for sea at New Orleans with all possible dispatch.”

On the 1st May, 1861, Mr. Seward, Secretary of State of the United States, addressed to the British Minister at Washington a despatch of that date, which contained the following passage:—

“ The so-called Confederate States have waged an insurrectionary war against this Government. They are buying, and even seizing, vessels in several places for the purpose of furnishing themselves with a naval force, and they are issuing letters of marque to privateers to be employed in preying on the commerce of this country. You are aware that the President has proclaimed a blockade of the ports included within the insurgent States. All these circumstances are known to the world.”

On the 6th May, 1861, the Congress of the Confederate States passed an Act intituled, “ An Act recognizing the Existence of War between the United States and the Confederate States, and concerning Letters of Marque, Prizes and Prize Goods.”[†] The first section of this Act was as follows:—

“ The Congress of the Confederate States of America do enact, that the President of the Confederate States is hereby authorized to use the whole land and naval force of the Confederate States to meet the war thus commenced, and to issue to private vessels commissions or letters of marque and general reprisal, in such form as he shall think proper, under the seal of the Confederate States, against the vessels, goods, and effects of the United States, and of the citizens or inhabitants of the States and territories thereof; provided, however, that property of the enemy (unless it be contraband of war) laden on board a neutral vessel shall not be subject to seizure under this Act; and provided further, that vessels of the citizens or inhabitants of the United States now in the ports of the Confederate States, except such as have been since the 5th April last, or may hereafter be, in the service of the Government of the United States, shall be allowed thirty days after the publication of this Act to leave said ports and reach their destination; and such vessels and their cargoes, excepting articles contraband of war, shall not be subject to capture under this Act during said period, unless they shall have previously reached the destination for which they were bound on leaving said ports.”

The Act then proceeded to lay down in detail regulations as to the conditions on which letters of marque should be granted to private vessels, and the conduct and behaviour of the officers and crews of such vessels, and the disposal of prizes made by them, similar to the regulations which have been ordinarily prescribed and enforced with respect to privateers in the United States and by the maritime powers of Europe.

The 4th and 7th sections were as follows:—

“ 4. That, before any commission or letters of marque and reprisal shall be issued as aforesaid, the owner or owners of the ship or vessel for which the same shall be requested, and the commander thereof for the time being, shall give bond to the Confederate States, with at least two responsible sureties not interested in such vessel, in the penal sum of 5,000 dollars, or, if such vessel be provided with more than 150 men, then in the penal sum of 10,000 dollars, with condition that the owners, officers, and crew who shall be employed on board such commissioned vessel shall and will observe the laws of the Confederate States, and the instructions which shall be given them according to law for the regulation of their conduct, and will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof by such vessel during her commission, and to deliver up the same when revoked by the President of the Confederate States.”

“ 7. That before breaking bulk of any vessel which shall be captured as aforesaid, or other disposal or conversion thereof, or of any articles which shall be found on board the same, such captured vessel,

* Appendix, vol. iii, p. 12.

† Ibid., p. 13.

goods, or effects, shall be brought into some port of the Confederate States, or of a nation or State in amity with the Confederate States, and shall be proceeded against before a competent tribunal; and after condemnation and forfeiture thereof shall belong to the owners, officers, and crew of the vessel capturing the same, and be distributed as before provided; and in the case of all captured vessels, goods, and effects which shall be brought within the jurisdiction of the Confederate States, the district courts of the Confederate States shall have exclusive original cognizance thereof, as the civil causes of Admiralty and maritime jurisdiction; and the said courts, or the courts being courts of the Confederate States into which such cases shall be removed, in which they shall be finally decided, shall and may decree restitution in whole or in part, when the capture shall have been made without just cause. And, if made without probable cause, may order and decree damages and costs to the party injured, for which the owners and commanders of the vessels making such captures, and also the vessels, shall be liable."

A further Act, intituled "An Act regulating the Sale of Prizes and the Distribution thereof," was likewise passed by the Congress of the Confederate States on the 14th of May, 1861.*

Many persons who had served as officers in the Navy of the United States offered themselves for employment in the naval service of the Confederate States, and those for whom employment could be found were received and employed in such service.

In and soon after the month of May, 1861, a number of armed ships, mostly of small tonnage, were fitted out in and sent to sea from ports in the Confederate States, and a considerable number of captures were made by them. Some of these were commissioned as public ships of war of the Confederate States, and commanded by officers in the naval service of the Confederacy; others as private ships of war or privateers. Among the armed vessels which were so fitted out and made prizes were the Calhoun, a steamer of upwards of 1,000 tons, sent to sea in May, 1861; the Jeff. Davis, Savannah, St. Nicholas, Winslow, and York. More than twenty prizes were made by these vessels. The Sumter (to which reference will be made hereafter) went to sea in June 1861; the Sallie and Nashville in October, 1861; the Echo in 1862; the Retribution and Boston in 1863; the Chickamauga, Olustee, and Tallahassee, in 1864. These vessels are stated to have taken from sixty to seventy prizes.

It appears from an official Report of the Secretary of the Navy of the United States that the number of vessels captured and destroyed by vessels of the United States during the war, for breach of blockade or in battle, exceeded 1,200.

Neutrality of the Maritime Powers.

The maritime Powers, on receiving information of the outbreak of the war, resolved to maintain a strict and impartial neutrality in their relations with the belligerents, holding that it did not belong to them, as Governments, to decide on the questions which had unhappily divided the American people, nor to take any part in the contest on which the future of the American Commonwealth appeared to depend.

Of all the nations of the world, Great Britain, by reason of her geographical position, the activity of her manufacturing and trading industries, her vast commerce with America, the extent and number of her Transatlantic possessions, the magnitude of her military and commercial marine, and its dispersion not only over the seas bordering on the American coast but over every part of the world, was the Power most immediately and profoundly affected by a civil war in the United States. The European Power which, after Great Britain, possessed the largest marine was France.

On the 14th May, 1861, Her Britannic Majesty's Government issued the following Proclamation, intended for the information of the officers of the Government and of British subjects in general:—†

"Victoria R.

"Whereas We are happily at peace with all Sovereigns, Powers, and States;

"And whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America;

"And whereas We, being at peace with the Government of the United States, have declared Our Royal determination to maintain a strict and impartial neutrality in the contest between the said Contending Parties;

"We therefore have thought fit, by and with the advice of our Privy Council, to issue this Our Royal Proclamation.

"And We do hereby strictly charge and command all Our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

"And whereas in and by a certain Statute made and passed in the 39th year of His Majesty King George III, intituled 'An Act to prevent enlisting or engagement of His Majesty's subjects

* Appendix, vol. iii, p. 15.

† Ibid., p. 17.

Part II.

Introductory statement.

to serve in a foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's licence, it is amongst other things declared and enacted as follows:—

“That if any natural-born subject of His Majesty, his heirs and successors, without the leave or licence of His Majesty, his heirs or successors, for that purpose first had and obtained, under the Sign Manual of His Majesty, his heirs or successors, or signified by Order in Council, or by Proclamation of His Majesty, his heirs or successors, shall take or accept, or shall agree to take or accept, any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation in the service of or for or under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of His Majesty shall, without such leave or licence as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as no officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a sailor or marine, or to be employed, or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used, for any warlike purpose, in the service of or for or under or in aid of any foreign Power, Prince, State, Potentate, Colony, Province, or part of any province or people, or of any person or persons, exercising or assuming to exercise the powers of Government in or over any foreign country, Colony, Province, or part of any province or people; or if any natural-born subject of His Majesty shall, without such leave and licence as aforesaid, engage, contract, or agree to go, or shall go, to any foreign State, Country, Colony, Province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of Government in or over any foreign Country, Colony, Province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor or marine in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions elsewhere, or in any Country, Colony, Settlement, Island, or place belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employments as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any province or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of Government as aforesaid, or to go, or to agree to go, or embark from any part of His Majesty's dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanour, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted.”

“And it is in and by the said Act further enacted,—

“That if any person, within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming, of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign Prince, State, or Potentate, or of any foreign Colony, Province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of Government in or over any foreign State, Colony, Province, or part of any province or people, as a transport or store-ship, or with intent to cruise or commit hostilities against any Prince, State, or Potentate, or against the subjects or citizens of any Prince, State, or Potentate, or against the persons exercising or assuming to exercise the powers of Government in any Colony, Province, or part of any province or country, or against the inhabitants of any foreign Colony, Province, or part of any province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom, or any of His Majesty's dominions, or in any Settlement, Colony, Territory, Island, or place belonging or subject to His Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanour, and shall upon conviction thereof upon any information or indictment, be punishable by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's Customs or Excise or any officer of His Majesty's Navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of Customs or Excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of His Majesty's Customs or Excise and the officers of His Majesty's Navy are empowered respectively to make seizures under the laws of Customs

and Excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the Revenues of Customs and Excise, or of the laws of trade and navigation.'

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" And it is in and by the said Act further enacted,—

" That if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, without the leave and licence of His Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting, the warlike force of any ship or vessel of war, or cruiser, or other armed vessel, which at the time of her arrival in any part of the United Kingdom, or any of His Majesty's dominions, was a ship of war, cruiser, or armed vessel in the service of any foreign Prince, State, or Potentate, or of any person or persons exercising or assuming to exercise any powers of Government in or over any Colony, Province, or part of any province or people belonging to the subjects of any such Prince, State, or Potentate, or to the inhabitants of any Colony, Province, or part of any province or country under the control of any person or persons so exercising or assuming to exercise the powers of Government, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon being convicted thereof upon any information or indictment, be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

" Now, in order that none of Our subjects may unwarily render themselves liable to the penalties imposed by the said Statute, We do hereby strictly command, that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said Statute, upon pain of the several penalties by the said Statute imposed, and of Our high displeasure.

" And We do hereby further warn all our loving subjects, and persons whatsoever entitled to Our protection, that if any of them shall presume, in contempt of this our Royal Proclamation, and of Our high displeasure, to do any acts in derogation of their duty as subjects of a neutral Sovereign in the said contest, or in violation or contravention of the law of nations in that behalf; as for example, and more especially, by entering into the military service of either of the said Contending Parties as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines on board any ship or vessel of war or transport of, or in the service of, either of the said Contending Parties; or by serving as officers, sailors, or marines on board any privateer bearing letters of marque of or from either of the said Contending Parties; or by engaging to go or going to any place beyond the seas with intent to enlist or engage in any such service, or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport by either of the said Contending Parties; or by breaking or endeavouring to break any blockade lawfully and actually established by or on behalf of either of the said Contending Parties; or by carrying officers, soldiers, despatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law of modern usage of nations, for the use or service of either of the said Contending Parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said Statute or by the law of nations in that behalf imposed or denounced.

" And We do hereby declare, that all our subjects, and persons entitled to Our protection, who may misconduct themselves in the premises, will do so at their peril and of their own wrong, and that they will in nowise obtain any protection from Us against any liabilities or penal consequences, but will, on the contrary, incur Our high displeasure by such misconduct.

" Given at Our Court at the White Lodge, Richmond Park, this 13th day of May, in the year of Our Lord 1861, and in the 21th of Our reign."

This Proclamation was published fourteen days after the receipt in London of the news that Fort Sumter had been reduced by bombardment, that the President of the United States had called out 75,000 men, and that Mr. Jefferson Davis had taken measures for issuing letters of marque;^{*} twelve days after receipt of intelligence that President Lincoln had published a Proclamation of blockade;[†] nine days after a copy of that Proclamation had been received from Her Britannic Majesty's Consul at New York;[‡] and three days after the same Proclamation had been officially communicated to Her Majesty's Secretary of State for Foreign Affairs by the United States' Minister, Mr. Dallas.[§]

On the 1st June, 1861, Her Britannic Majesty's Government issued orders by which the armed ships of both belligerents, whether public ships of war or privateers, were interdicted from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, or of any of Her Majesty's Colonies or Possessions abroad.]

The Government of the Confederate States remonstrated warmly against these orders, as practically unequal in their operation, and unduly disadvantageous to the belligerent whose ports were blockaded. The Secretary of State of the United States expressed his satisfaction with them, as likely to "prove a death-blow to Southern privateering."

* Appendix, vol. iii, pp. 2 and 3.

† "Times" and "Daily News" of May 2, 1861.

‡ Appendix, vol. iii, p. 4.

§ Ibid., p. 7.

|| Ibid., p. 18.

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These orders were strictly enforced throughout the whole period of the war, and no armed vessel was suffered to bring prizes into any British port.

On the 10th June, 1861, the Government of the Emperor of the French issued a Declaration which was as follows:—*

“*Paris, le 10 Juin, 1861.*

“ Le Ministre des Affaires Etrangères a suumis à l'Empereur la déclaration suivante, que Sa Majesté a reçue de son approbation:—

“*“ Déclaration.*

“ Sa Majesté l'Empereur des Français, prenant en considération l'état de paix qui existe entre la France et les États Unis d'Amérique, a résolu de maintenir une stricte neutralité dans la lutte engagée entre le Gouvernement de l'Union et les États qui prétendent former une Confédération particulière.

“ En conséquence, Sa Majesté, vu l'Article 14 de l'Ordonnance de la Marine du mois d'Août, 1861, l'Article 3 de la Loi du 10 Avril, 1825, les Articles 84 et 85 du Code Pénal, 65 et suivants du Décret du 24 Mars, 1852, 313 et suivants du Code Pénal Maritime, et l'Article 21 du Code Napoléon;—

“*“ Déclare:*

“*“ 1. Il ne sera permis à aucun navire de guerre ou corsaire de l'un ou l'autre des belligérants d'entrer et de sejourner avec des prises dans nos ports ou rades pendant plus de vingt-quatre heures, hors le cas de relâche forcée.*

“*“ 2. Aucun vento d'objets provenant de prises ne pourra avoir lieu dans nos dits ports ou rades.*

“*“ 3. Il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque pour faire la course maritime, ou de courir d'une manière quelqueque à l'équipement ou l'armement d'un navire de guerre ou corsaire de l'une des deux parties.*

“*“ 4. Il est également interdit à tout Français, résidant en France ou à l'étranger, de s' enrôler ou prendre du service, soit dans l'armée de terre, soit à bord des bâtiments de guerre ou des corsaires de l'une ou de l'autre des belligérants.*

“*“ 5. Les Français résidant en France ou à l'étranger devront également s'abstenir de tout fait qui, commis en violation des lois de l'empire ou du droit des gens, pourrait être considéré comme un acte hostile à l'une des deux parties, et contraire à la neutralité que nous avons résolu d'observer.*

“*“ Les contrevenants aux défenses et reconnaissances contenues dans la présente Déclaration seront poursuivis, s'il y a lieu, conformément aux dispositions de la Loi du 10 Avril, 1825, et aux Articles 81 et 85 du Code Pénal, sans préjudice de l'application qu'il pourra y avoir lieu de faire aux dits contrevenants des dispositions de l'Article 21 du Code Napoléon, et des Article 65 et suivants du Décret du 24 Mars, 1852, sur la marine marchande, 313 et suivants du Code Pénal pour l'armée de mer.*

“*“ Sa Majesté déclare, en outre, que tout Français qui ne se sera pas conformé aux présentes prescriptions ne pourra prétendre à aucune protection de son Gouvernement contre les actes ou mesures, quels qu'ils soient, que les belligérants pourraient exercer ou décréter.*

“*“ NAPOLEON.”*

“*Le Ministre des Affaires Etrangères,*

“*E. THOUVENEL.”*

A Decree, of which a translation is subjoined, was on the 17th June, 1861, issued by the Government of the Queen of Spain:—†

(Translation.)

“*Palace, June 17, 1861.*

“ Taking into consideration the relations which exist between Spain and the United States of America, and the desirability that the reciprocal sentiments of good understanding should not be changed by reason of the grave events which have taken place in that Republic, I have resolved to maintain the most strict neutrality in the contest begun between the Federal States of the Union and the States federated at the South; and in order to avoid the damage which might accrue to my subjects and to navigation and commerce, from the want of clear provisions to which to adjust their conduct, I do decree the following:—

“ Art. 1. It is forbidden in all the ports of the Monarchy to arm, provide, or equip any privateer vessel, whatever may be the flag she displays.

“ Art. 2. It is forbidden in like manner to the owners, masters, or captains of merchant-vessels to accept letters of marque, or contribute in any way whatsoever to the armament or equipment of vessels of war or privateers.

“ Art. 3. It is forbidden to vessels of war or privateers with their prizes, to enter or to remain for more than 24 hours in the ports of the Monarchy, except in case of stress of weather. Whenever this last shall occur, the authorities will keep watch over the vessel, and oblige her to go out to sea as soon as possible without permitting her to take in any stores except those strictly necessary for the moment, but in no case arms nor supplies for war.

“ Art. 4. Articles proceeding from prizes shall not be sold in the ports of the Monarchy.

“ Art. 5. The transportation under the Spanish flag of all articles of commerce is guaranteed, except when they are directed to blockaded ports. The transportation of effects of war is forbidden, as well as the carrying of papers or communications for belligerents. Transgressors shall be responsible for their acts, and shall have no right to the protection of my Government.

“ Art. 6. It is forbidden to all Spaniards to enlist in the belligerent armies, or take service on board of vessels of war or privateers.

* Appendix, vol. iii, p. 22.

† Ibid., p. 23.

"Art. 7. My subjects will abstain from every act which, in violation of the laws of the kingdom, can be considered as contrary to neutrality."

"Art. 8. Those who violate the foregoing provisions shall have no right to the protection of my Government, shall suffer the consequences of the measures which the belligerents may dictate, and shall be punished according to the laws of Spain."

"SIGNED WITH THE ROYAL HAND.

"The Minister of State,
"Saturnino Calderon Collantes."

The following public notifications were, previously to the 16th June, 1861, issued by the Government of the King of the Netherlands:—*

(Translation.)

"In obedience to the King's orders, the Ministers for Foreign Affairs, of Justice, and of the Marine, present to the knowledge of all whom it may concern, that to guard against probable difficulties during the doubtful complications in the United States of North America, no privateers under any flag, or provided with any commission or letters of marque, or their prizes, shall be admitted into our havens or seaports, unless in case of distress, and that requisite orders be issued that under any circumstances such privateers and their prizes be required to go again to sea as speedily as possible."

"The Ministers above named."

"The Hague.

(Translation.)

"The Minister for Foreign Affairs and the Minister of Justice, by the King's authority, warn, by these presents, all inhabitants of the Kingdom, that during the existing disturbances in the United States of America they in no wise take part in privateering, because the Netherlands Government has acceded to the Declaration upon maritime rights act forth by the Paris Conference of 1836, whereby, among other matters, privateering is abolished, and no recognition of commissions obtained for letters of marque is permitted. Also that commissions and letters of marque, in conflict with the aforesaid prohibition, which may be issued to inhabitants of the Netherlands cannot have legal effect in behalf of the King's subjects, or of any abroad who are in subjection to the laws of the Kingdom. Those who, under such circumstances, engage in privateering or lend their aid in it to others, will be considered as pirates, and prosecuted according to law in the Netherlands, and subjected to the punishment provided for the commission of such offences."

"The Ministers above named."

"The Hague.

(Translation.)

"The Minister for Foreign Affairs, apprised by a communication from the Minister of Marine that the King had authorized the naval force in the West Indies to be seasonably strengthened by His Majesty's steam-frigate Zealand and the screw-propellers *Dyamhi* and *Vesuvius*, for the purpose of giving protection to the trade and navigation of the Netherlands during the contest which seems to be in existence in the United States of North America, wherever it may be desired, accordingly esteem it to be his duty to direct the attention of shipmasters, consignees, and freighters to the peril to which their insurance against loss will be exposed by any violation of the obligations imposed on neutral Powers to respect actual blockades, and not to carry contraband of war, or despatches of belligerents."

"In these cases they will be subject to all the resulting losses that may follow, without the benefit of any protection or intervention on the part of His Majesty's Government. Of which take notice."

"The Minister above named."

"The Hague, June 1861.

The Government of the Emperor of Brazil issued the following Circular, addressed to the Presidents of Provinces within the Brazilian Empire:—†

Circular to the Presidents of Provinces.

(Translation.)

"Illustrious and Excellent Sir,

"Rio de Janeiro, Ministry of Foreign Affairs,

"August 1, 1861.

"The strife that has broken out between the Federal Government of the United States of North America, and some of those States which have declared themselves constituted as a separate Confederation, may produce questions for our country, for the solution of which it is important that your Excellency should be prepared; and I have, therefore, received orders from His Majesty the Emperor to declare to your Excellency that the Imperial Government considers that it ought to maintain itself in the most strict neutrality during the war in which those States are unhappily engaged; and in order that that neutrality may be preserved, it is fitting that the following determinations be observed:—

"The Confederate States have no recognized existence; but, having constituted a distinct Government *de facto*, the Imperial Government cannot consider their naval armaments as acts of piracy, nor refuse them, with the necessary restrictions, the character of belligerents which they have assumed."

"In conformity with this, Brazilian subjects are to abstain from all participation and aid in favour of one of the belligerents, and they must not take part in any acts which can be considered as hostile to one of the two parties, and contrary to the obligations of the neutrality."

"The exportation of warlike articles from the ports of the Empire for the new Confederate States is absolutely prohibited, whether it is intended to be done under the Brazilian flag or that of another nation."

* Appendix, vol. iii, p. 27.

† Ibid., p. 24.

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"The same trade in contraband of war must be forbidden to Brazilian ships, although they may be destined for the ports subject to the Government of the North American Union."

"No ship with the flag of one of the belligerents, and which may be employed in this war, or intended for it, can be provisioned, equipped, or armed in the ports of the Empire; the furnishing of victuals and naval provisions indispensable for the continuation of the voyage not being included in this prohibition."

"No ship of war or cruiser shall be allowed to enter and remain with prizes in our ports or bays more than twenty-four hours, except in case of forced arrival, and they shall in no way be allowed to dispose of the said prizes, or of objects coming from them."

"In the execution of these measures, and in the solution of the questions which may arise, your Excellency will be guided by the principles of international law, keeping in mind the instructions issued by this Ministry on the 18th of May, 1853, retaining the purport of the Circular of the 30th of July, 1853, relative to the United States at strife with the Confederate States; and you will communicate to the Imperial Government any difficulties or extraordinary occurrences that require fresh instructions."

"I repeat, &c.

(Signed) "BENVENUTO AUGUSTO DE MAGALHAES TAQUES."

"To his Excellency the President of the Province of ."

Declarations, Decrees, or Notifications were likewise issued by other maritime Powers.

The Sumter.

Of the armed ships sent to sea by the Confederate States during the first year of the war, two only, the Sumter and Nashville, entered any port belonging to a European Power. It is necessary to state briefly the circumstances which occurred in relation to these vessels.

The Sumter was a steam-ship which had been purchased by the Navy Department of the Government of the Confederate States, was commissioned as a public ship of war in the service of those States, and was commanded by an officer who had previously held a Commission in the Navy of the United States. It appears from the Message of Mr. Jefferson Davis, dated 29th April, 1861, and hereinbefore referred to, that she had at that date been purchased and manned, and was being actively prepared for sea. She sailed from the Mississippi River on the 30th June, 1861, cruized for six months, and captured seventeen prizes.

In the course of this cruise she entered (in the order herein named) ports within the dominions of the following Sovereigns and States, namely, the Queen of Spain, the King of the Netherlands, the Republic of Venezuela, the Queen of Great Britain, the Emperor of Brazil, and the Emperor of the French. She obtained coal and supplies in the ports of Cienfuegos, Curaçon, Paramaribo, Trinidad, and Martinique successively.

At the time of her arrival at Cienfuegos she had with her six prizes, captured since her departure from New Orleans, and these she left behind her in harbour when she sailed. The Government of the United States complained to the Spanish Government of the admission of the Sumter into port, and of her having been permitted to take in coal and water; and demanded that the prizes should be released, on the ground that the capturing vessel was a pirate. The Spanish Government did not assent to the demand that the Sumter should be treated as a pirate; but the prizes which she had left in port were set at liberty by order of the Captain-General of the island, on the ground that they were proved, on examination, to have been captured within the territorial waters of Cuba under unlawful circumstances.

The Sumter approached the port of St. Anna's, Curaçoa, on the 15th July, hoisted the flag of the Confederate States, and requested permission to enter. The Governor of the island withheld this permission until assured that she was not a privateer, the regulations issued by the Government of the Netherlands prohibiting the admission of privateers unless in case of distress, but granted it upon receiving from her Commander a declaration in writing that the "Sumter was a ship of war duly commissioned by the Government of the Confederate States." In accepting this declaration as sufficient, without further proof, he acted upon the unanimous advice of his Colonial Council. The Sumter remained eight days in port, and took in coal.

With reference to these facts the Government of the United States, on the 15th of August, 1861, addressed to the Government of the Netherlands a complaint and a demand for reparation.* The latter Government answered that it had faithfully fulfilled its duty as a neutral Power, and would continue to adhere to it in future. In the despatch conveying this answer the following propositions (amongst others) were laid down and affirmed by the Government of the Netherlands:—†

* Appendix, vol. ii, p. 725.

† Ibid., p. 730.

1. According to the principles of the law of nations, all nations, without exception, may admit vessels of war belonging to a belligerent State to their ports, and accord to them all the favours which constitute an asylum.

2. As evidence that the Sumter was not a privateer, the Governor of Curaçoa was bound to be satisfied with the word of her Commander given in writing, and had no right to demand further proofs.

3. The Sumter was not, however, in fact a privateer, not being the property of private owners. She was a ship of war.

4. It cannot be admitted that all vessels carrying the Confederate flag should, as contended by the Government of the United States, be considered as privateers; because the principles of the law of nations, as well as the examples of history, require that the rights of war should be accorded to those States.

5. Much less can these vessels be regarded as pirates, or "engaged," in the words of the American Secretary of State, "in a piratical expedition against the commerce of the United States." This would be incompatible with neutrality.

Adhering to these principles the Government of the Netherlands recognized, at the same time, that it is the duty of a neutral State to take care that vessels of the belligerent parties commit no act of hostility within the limits of its territory, and do not keep watch in the ports of its dominion to attack from them vessels of the enemy; and it informed the Government of the United States that instructions on this head would be sent to the Governors of the King's colonial possessions.

Subsequently to this correspondence, and on the 19th of August, 1861, the Sumter was admitted into the port of Paramaribo, in Dutch Guiana, and coaled there, remaining in port eleven days.*

The Government of the Netherlands shortly afterwards issued orders to the authorities in its colonial possessions to the effect that no vessel of either belligerent should be allowed to take in more coal than would be sufficient for twenty-four hours' consumption, or to remain in port during a longer period than forty-eight hours.†

Before arriving at Paramaribo the Sumter had visited Puerto Cabello, in Venezuela, and the British island of Trinidad. She remained in port, at the latter place, during six days, and purchased from private merchants coal and provisions. Her Commander had applied for permission to purchase coal from the Government stores; but this had been refused by the Governor.

With reference to these facts the subjoined correspondence passed between the Government of the United States, through its Minister in London (Mr. Adams) and the Government of Her Britannic Majesty:—‡

Mr. Adams to Earl Russell.

"Legation of the United States, September 30, 1861.

"The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States, regrets to be obliged to inform the Right Honourable Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, that he has been instructed by the President of the United States to prefer a complaint against the authorities of the Island of Trinidad for a violation of Her Majesty's Proclamation of Neutrality, by giving aid and encouragement to the insurgents of the United States. It appears by an extract from a letter received at the Department of State from a gentleman believed to be worthy of credit, a resident of Trinidad, Mr. Francis Bernard, a copy of which is submitted herewith, that a steam-vessel known as an armed insurgent privateer, called the Sumter, was received on the 30th of July last at that port, and was permitted to remain for six days, during which time she was not only furnished with all necessary supplies for the continuance of her cruise, under the sanction of the Attorney-General, but that Her Majesty's flag was actually hoisted on the Government flag-staff in acknowledgment of her arrival.

"The Undersigned has been directed by his Government to bring this extraordinary proceeding to the attention of Lord Russell, and in case it shall not be satisfactorily explained, to ask for the adoption of such measures as shall insure, on the part of the authorities of the island, the prevention of all occurrences of the kind during the continuance of the difficulties in America.

"The Undersigned deems it proper to add, in explanation of the absence of any official representation from Trinidad to substantiate the present complaint, that there was no Consul of the United States there at the time of the arrival of the vessel. The Undersigned had the honour, a few days since, to apprise Lord Russell of the fact that this deficiency had been since supplied by preferring an application for Her Majesty's *exequatur* for a new Consul, who is already on his way to occupy his post.

"The Undersigned, &c.

(Signed)

"CHARLES FRANCIS ADAMS."

* Appendix, vol. II, p. 734.

† Ibid., p. 737.

‡ Ibid., p. 3.

E

Part II.
Introductory
Statement.

(Inclosure.)

Mr. Bernard to Mr. Seward.

(Extract.)

"Sir,

"I beg to inform you that on the 30th ultimo a steam sloop of war (Semmes commander) carrying a Secession flag, five guns, some of a large calibre, and a crew of from 120 to 150 men, sailed boldly into our harbour, and reported herself to the authorities of this island as being on a cruise. She was last from Puerto Cabello; and since she succeeded in getting out of the Mississippi River she has already captured no less than eleven American vessels. I have ascertained the names of some of them, viz.: the Joseph Maxwell, Abe Bradford, Minnie Miller, West Wind, of Westerly, with a cargo of sugar from Havana, and Golden Rocket, which was burnt by her off the coast of Cuba.

"The Sumter landed eight of her prisoners here in a destitute condition; but a contribution has been raised here for their benefit, sufficient to supply their immediate wants, and I will take care that they are provided for until an opportunity offers to ship them to the States.

"The Sumter remained here till the 5th instant, and was allowed to supply herself with coals and other necessary outfit. The British flag was hoisted on the Government flag-staff for her arrival, and the officers of the British war-vessel Cadmus appeared to be on amicable terms with those of the Sumter. The merchant who supplied the Sumter with coals did it with the consent and approval of our Attorney-General.

"Being a loyal American, I consider it my duty to send you these informations, as there has been no Consul of our nation in this island for many months.

"I am, &c.

(Signed)

"FRANCIS BERNARD."

*Earl Russell to Mr. Adams.**

"Foreign Office, October 4, 1861.

"The Undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, has had the honour to receive a complaint from Mr. Adams, Envoy Extraordinary and Minister Plenipotentiary of the United States at this Court, against the authorities of the Island of Trinidad for a violation of Her Majesty's Proclamation of Neutrality, by giving aid and encouragement to the insurgents of the United States.

"It appears, from the accounts received at the Colonial Office and at the Admiralty, that a vessel bearing a Secession flag entered the port of Trinidad on the 30th of July last.

"Captain Hillyar, of Her Majesty's ship Cadmus, having sent a boat to ascertain her nationality, the Commanding Officer showed a commission signed by Mr. Jefferson Davis, calling himself the President of the so-called Confederate States.

"The Sumter, which was the vessel in question, was allowed to stay six days at Trinidad, and to supply herself with coals and provisions; and the Attorney-General of the island perceived no illegality in these proceedings.

"The Law Officers of the Crown have reported that the conduct of the Governor was in conformity to Her Majesty's Proclamation.

"No mention is made by the Governor of his hoisting the British flag on the Government flag-staff; and if he did so, it was probably in order to show the national character of the island, and not in acknowledgement of the arrival of the Sumter.

"There does not appear, therefore, any reason to believe that Her Majesty's Proclamation of Neutrality has been violated by the Governor of Trinidad, or by the Commanding Officer of Her Majesty's ship Cadmus.

"The Undersigned, &c.

(Signed)

"RUSSELL."

The Government of the United States instructed Mr. Adams to inform the Government of Great Britain "that the President deeply regrets that Lord Russell is altogether unable to give to our complaint a satisfactory solution." The reason alleged for this expression of dissatisfaction was the same which had been previously rejected by the Government of the Netherlands; namely, that the Sumter was a piratical vessel, and that her officers and crew were pirates, and that they ought to be treated as such in foreign ports and waters.

Further communications on the subject subsequently passed between the two Governments. These communications are stated in the subjoined despatches, addressed respectively by Her Britannic Majesty's Minister at Washington to Her Majesty's Secretary of State for Foreign Affairs, and by the Minister of the United States in London to the Secretary of State of the United States:—

Lord Lyons to Earl Russell.

"My Lord,

"Washington, November 4, 1861.

"Mr. Seward spoke to me, the day before yesterday, respecting the admission of the Confederate vessel Sumter into British and Dutch ports.

"With regard to the Dutch Government, Mr. Seward said that he had been obliged to cause very

* Appendix, vol. ii, p. 5.

serious remonstrances to be addressed to them, but that he had now been informed that they had given orders that the Southern privateers should not be allowed to remain more than twenty-four hours in a Dutch port. It was true, he said, that it had been declared that these orders had not been issued in deference to the representations of the United States' Government, but this was immaterial; so long as the privateers were excluded in practice, he did not care to inquire on what ground that was done.

Mr. Seward then mentioned the reception of the Sumter at Trinidad, and alluded to your Lordship's note to Mr. Adams of the 4th of October on the subject. He said he had been obliged to send immediately instructions to Mr. Adams with regard to that note. He did not tell me the nature of those instructions, but he spoke to me of the affair in a tone of complaint, and dwelt especially on the length of time during which the Sumter had been allowed to remain at Trinidad, and on the supplies which she had obtained there. He said that France, and, he thought, all the other Powers of Europe, refused to allow privateers to remain for more than twenty-four hours in their ports. He could hardly conceive that England wished to stand alone as the only Power which admitted the enemies of the United States, without restriction, into its harbours. He supposed that the matter could hardly have been presented in this light to Her Majesty's Government.

"I observed to Mr. Seward that I supposed that in this matter each Power had looked back to precedents, and taken the course which had been usual with it on similar occasions in former times. In one point the English rule was, I said, more stringent than that of France and many other Powers, for armed vessels were not allowed to carry their prizes into British ports for any time, however short.

"Mr. Seward did not pursue the conversation. He merely said that he had wished to mention the matter to me in the hope that I might do something towards getting it satisfactorily settled.

"I have, &c.

(Signed) "LYONS."

Lord Lyons to Earl Russell.

"My Lord,

"With reference to my despatch of the 4th instant, I have the honour to inform your Lordship that this morning Mr. Seward spoke to me again on the subject of the admission of Confederate vessels into British ports. He used very nearly the same language on this as on the former occasion. He seemed, however, to wish now to be understood as requesting me positively to suggest to Her Majesty's Government to adopt the rule in this respect which had, he said, been adopted by all the other Powers of Europe. He seemed to desire to make this suggestion through me, rather than in a more formal manner through the United States' Minister in London.

"I said to Mr. Seward that Great Britain had, I thought, been the first Power to place any restriction upon the admission into her ports of the armed vessels of the belligerents in the present war; and that she had no doubt followed the precedents afforded by her own previous conduct in similar cases. I did not make any difficulty about conveying Mr. Seward's suggestion to your Lordship, but I did not express any opinion as to the reception it would meet with.

"I have, &c.

(Signed) "LYONS."

Mr. Adams to Mr. Seward.

(Extract.)

"Sir,

"Legation of the United States,

"London, December 7th 1861

to ask a Conference of Lord Russell for the purpose of talking over the substance of your communications to me in despatches No. 136 and No. 137. It was appointed for yesterday at 3 o'clock, when I enjoyed an opportunity for full and frank conversation.

"On the third point his Lordship contested the fact as stated in the despatch. He recapitulated what the Government had done as regards the assistance said to have been rendered to privateers in the colonies. Supplies had been refused by the authorities in all cases. Whatever had been obtained had come from purchases of individuals. The only difference that he could find between the action of this Government and that of other nations was, that the stay of belligerent vessels was confined by the latter to twenty-four hours. As to that, he said that the omission to insert the same provision in the British orders was by no means owing to unfriendliness to the United States. On the contrary, it was thought that, if a Government vessel of theirs should put into any port, such as Malta, for example, to stay a short time, it had seemed to them churlish to issue a decree to limit it to a single day. He said he had taken some pains to make inquiries as to the action of other Governments, and, so far as he could learn, he found it in other respects substantially the same.

"I have, &c.

(Signed) "CHARLES FRANCIS ADAMS."

With the view of preventing the recurrence of similar complaints in future, and also of preventing as far as might be the possibility of any abuse of the asylum granted in British ports (as in those of other neutral Powers) to belligerent vessels, the British Government on the 31st of January, 1862, issued the subjoined Orders, to be observed in all the ports of the United Kingdom and those of Her Majesty's transmarine territories and possessions:—

Introductory statement.

" My Lords,

Foreign Office, January 31, 1862.

" Her Majesty being fully determined to observe the duties of neutrality during the existing hostilities between the United States and the States calling themselves 'the Confederate States of America,' and being, moreover, resolved to prevent, as far as possible, the use of Her Majesty's harbours, ports, and coasts, and the waters within Her Majesty's territorial jurisdiction, in aid of the warlike purposes of either belligerent, has commanded me to communicate to your Lordships, for your guidance, the following Rules, which are to be treated and enforced as Her Majesty's orders and directions.

" Her Majesty is pleased further to enjoin that these Rules shall be put in force in the United Kingdom and in the Channel Islands on and after Thursday, the 6th day of February next, and in Her Majesty's territories and possessions beyond the seas six days after the day when the Governor or other chief authority of each of such territories or possessions respectively shall have notified and published the same, stating in such notification that the said Rules are to be obeyed by all persons within the same territories and possessions.

" I. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves 'the Confederate States of America,' or until Her Majesty shall otherwise order, no ship of war or privateer belonging to either of the belligerents shall be permitted to enter or remain in the port of Nassau, or in any other port, roadstead, or waters of the Bahama Islands, except by special leave of the Lieutenant-Governor of the Bahama Islands, or in case of stress of weather. If any such vessel should enter any such port, roadstead, or waters by special leave, or under stress of weather, the authorities of the place shall require her to put to sea as soon as possible, without permitting her to take in any supplies beyond what may be necessary for her immediate use.

" If, at the time when this order is first notified in the Bahama Islands, there shall be any such vessel already within any port, roadstead, or waters of those islands, the Lieutenant-Governor shall give notice to such vessel to depart, and shall require her to put to sea, within such time as he shall, under the circumstances, consider proper and reasonable. If there then shall be ships of war or privateers belonging to both the said belligerents within the territorial jurisdiction of Her Majesty, in or near the same port, roadstead, or waters, the Lieutenant-Governor shall fix the order of time in which such vessels shall depart. No such vessel of either belligerent shall be permitted to put to sea until after the expiration of at least twenty-four hours from the time when the last preceding vessel of the other belligerent (whether the same shall be a ship of war, or privateer, or merchant-ship), which shall have left the same port, roadstead, or waters, or waters adjacent thereto, shall have passed beyond the territorial jurisdiction of Her Majesty.

" II. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves 'the Confederate States of America,' all ships of war and privateers of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom of Great Britain and Ireland, or in the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose or for the purpose of obtaining any facilities of warlike equipment; and no ship of war or privateer of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or waters subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant-ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

" III. If any ship of war or privateer of either belligerent shall, after the time when this order shall be first notified and put in force in the United Kingdom and in the Channel Islands, and in the several colonies and foreign possessions and dependencies of Her Majesty respectively, enter any port, roadstead, or waters belonging to Her Majesty, either in the United Kingdom or in the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs, in either of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies, beyond what may be necessary for her immediate use; and no such vessel, which may have been allowed to remain within British waters for the purpose of repair, shall continue in any such port, roadstead, or waters for a longer period than twenty-four hours after the necessary repairs shall have been completed: Provided, nevertheless, that in all cases in which there shall be any vessels (whether ships of war, privateers, or merchant-ships) of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war, a privateer, or a merchant-ship) of the one belligerent, and the subsequent departure therefrom of any ship of war or privateer of the other belligerent; and the times hereby limited for the departure of such ships of war and privateers respectively shall always, in case of necessity, be extended, so far as may be requisite for giving effect to this proviso, but not further or otherwise.

" IV. No ship of war or privateer of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew; and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own

country, or to some nearer destination; and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters, as aforesaid.

"I have, &c.

(Signed) "J. RUSSELL."

By the first and second of the foregoing Orders belligerent vessels were absolutely excluded from the ports, roadsteads, and waters of the Bahama Islands, except in case of stress of weather or of special leave granted by the Lieutenant-Governor. These islands being very near to the American coast, access to them was of little importance to the armed vessels of the United States, unless under stress of weather; whilst to vessels of the Confederate States it was of great importance, the harbours of these States being geographically, though not always, effectively blockaded.

The Orders thus issued by Her Britannic Majesty's Government were more stringent and comprehensive by far than those of any other neutral Government. It was not the fact that in the ports of the French Empire, or in those of other neutral Powers generally, belligerent vessels entering without prizes were prohibited from remaining more than twenty-four hours or from purchasing supplies other than arms and military supplies.

The Sumter, after leaving Trinidad, entered in succession the ports of Paramaribo, of San Juan de Maranhão in the Empire of Brazil, where she remained ten days; of Port Royal and St. Pierre in Martinique; and of Cadiz, where she remained fourteen days. She was during fourteen days in the waters of Martinique, and procured there, under the written authority of the Governor of the island, as much coal as her commander wished to take on board to enable him to extend his cruise across the Atlantic, together with other supplies. A few days after her arrival, the Iroquois, a war steamer of the United States, entered Port Royal harbour, and the subjoined correspondence passed between her Captain and the Governor:—

Captain Palmer to the Governor of Martinique.

"United States' Steam-ship Iroquois,

"Off St. Pierre, November 15, 1861.

"Sir,
"As circumstances prevent my paying my personal respects to your Excellency or your representative at this place, I write to announce my arrival in the afternoon of yesterday, as well as to inform you that, to my surprise, I find a notorious steamer called the Sumter quietly coaling at the wharves, and enjoying the hospitalities of the port.

"As your Excellency cannot be aware of the character of this vessel, I denounce her to you as one that has been for some time engaged in pirating upon the commerce of the United States, robbing, burning, or otherwise destroying all American vessels which come within her reach.

"May I not hope, therefore, that your Excellency, upon this representation, will not allow her to enjoy the privileges I complain of, but direct her to leave the protection of the French flag and the immunities of a French port?

"I have, &c.

(Signed) "JAS. S. PALMER,

"Commanding U.S. Steam-ship Iroquois.

"To his Excellency the Governor of Martinique."

The Governor of Martinique to Captain Palmer.

(Translation.)

"M. le Commandant,

"Gouvernement de la Martinique, Cabinet du Gouverneur,

"No. 430, Fort-de-France, le 15 Novembre, 1861.

"I have the honour to reply to the letter which you addressed me this morning.

"I am not ignorant, M. le Commandant, of the presence in the roads of St. Pierre of a vessel belonging to the States of the South, who profess to have formed a separate Confederation.

"Tu accomplis les généreuses intentions de l'Empereur, I wish to be hospitable to the vessels of the two belligerent parties, but I will not, nor can, without violating the orders of His Majesty, divest myself of the absolute neutrality that I ought to observe.

"That is to say to you, M. le Commandant, that if it is not my intention to refuse an anchorage to a vessel belonging to the States of the South, I offer to you, on the other hand, the same hospitality and the same facilities to the vessels belonging to the Government of the Union which you have the honour to command.

"There exist, besides, international laws, that every civilized nation scrupulously observes, and which I need scarcely recall to you, M. le Commandant, nor to the Commander of the Sumter.

"Accept &c.

(Signed) "LE AMIRAL, Gouverneur de la Martinique," &c.

"M. le Commandant de l'Iroquois."

The Captain of the Iroquois was also informed that, if the Sumter should leave

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the port before him, he would not be permitted to weigh anchor until twenty-four hours should have elapsed after her sailing. He quitted his anchorage immediately, and cruised in the offing, with the design of intercepting her, till the night of the 23rd, when she succeeded in making her escape.

On the 18th of January, 1862, the *Sumter* arrived at Gibraltar. The American Consul at that port immediately addressed a letter to the Governor, informing him of the fact, and expressing a hope that he would "give such orders as may prevent this rebel cruiser from obtaining the necessary facilities, and making equipments for the continuance of her unlawful vocation." To this letter the following answer was returned by the Colonial Secretary of the dependency:—*

Mr. Freeling to Mr. Sprague.

"Sir,

"I am directed by his Excellency the Governor to acknowledge the receipt of your letter of yesterday's date on the subject of the Confederate steamer *Sumter*, now at anchor in this bay.

"His Excellency desires me, in reply, to inform you that the instructions contained in Her Majesty's Proclamation of the 13th of May last (published in the 'Gibraltar Chronicle' of the 1st of June, 1861), with reference to the strict neutrality to be observed by Her Majesty's subjects in the contest between the Government of the United States of America and certain States styling themselves 'the Confederate States of America,' will be strictly carried out with regard to the rights and obligations towards both belligerent parties.

"I have, &c.

(Signed). "S. FREELING, Colonial Secretary."

On the 21st January, 1862, the Consul addressed a letter to the Senior Naval Officer at Gibraltar, asking to be informed, for the guidance of the masters of American vessels then lying in the bay, what rules he intended to lay down and enforce "in case any American vessels should leave port before the *Sumter*, or if the *Sumter* should be outside the port, waiting to intercept them." He was informed, in answer, that "American merchant-vessels quitting Gibraltar whilst the *Sumter* is in the bay, are entitled to a start of twenty-four hours before being pursued with a hostile intention, and it is the duty of the authorities concerned to see that such protection is extended over them." He was further informed that notice of this regulation had been given to the Commander of the *Sumter*.†

On the same 21st of January, the Consul telegraphed to the Minister of the United States in London information that the *Sumter* was still in harbour, and added, "The British Governor observes strict neutrality, in conformity with the Queen's Proclamation."

The *Sumter* was, in fact, according to the statements of the United States' Consul, unable to leave Gibraltar for want of coal, the Consul having succeeded in inducing the merchants of the place to refuse to supply her with coal, though her Commander offered 50 per cent. more than the market price. She then applied to be allowed to purchase coal from the Government stores; but this was refused, in conformity with the rule observed throughout the war, at all British ports, towards the vessels of both belligerents.‡

On the 12th February, 1862, the United States' war-steamer *Tuscarora* arrived at Gibraltar, and proceeded to coal at the neutral port of Algeciras. She was soon afterwards joined by the United States' war-steamer *Ino*, and subsequently by the *Kearsarge*; and the *Ino* and *Kearsarge* remained off Algeciras waiting to intercept the *Sumter*. The *Sumter* was paid off in April, and lay in harbour till December 1862, when she was sold by public auction (after having been first deprived of her armament) to a British subject resident at Liverpool. The United States' Consul addressed to the Governor a protest against the sale, on the ground, first, that the *Sumter* had come into the possession of the Confederate Government as a prize of war (which was proved not to be the fact, the vessel having been purchased by that Government from a private owner), and secondly, that the sale was made "for the purpose of avoiding a capture by the cruisers of the United States." This protest was not accompanied by any proofs, but notice of it was officially published by the Colonial Secretary before the day fixed for the sale.§

With reference to this sale the subjoined letters passed between the United States' Minister in London and Her Britannic Majesty's Secretary of State for Foreign Affairs:—||

Mr. Adams to Earl Russell.

"My Lord,

"Legation of the United States, London, December 30, 1862.

"On the 19th of this month, I am informed by the Consul of the United States at Gibraltar, that a public sale is said to have been made of the steamer *Sumter*, a vessel which had comitted

* Appendix, vol. ii, p. 13.

† Ibid., pp. 9 and 10.

‡ Ibid., p. 18.

§ Ibid., p. 47.

much depredation upon the commerce of the United States, and which had taken shelter in that port from pursuit from the national ships.

" Having the strongest reason, from the known character and previous conduct of the alleged purchaser, to believe that this sale is effected solely for the purpose of rescuing the vessel from its present position, and of making use of Her Majesty's flag to convert it to new purposes of hostility to the United States, I must pray your Lordship's attention to the necessity under which I am placed of asking the assistance of Her Majesty's Government to prevent any risk of damage to the United States from a fraudulent transaction in one of her ports; or, in default of it, of declining to recognize the validity of the transfer, should that vessel subsequently be found by the armed ships of the United States sailing on the high seas.

"Renewing, &c.
(Signed) "CHARLES FRANCIS ADAMS."

*Earl Russell to Mr. Adams.**

" Sir,
" I have the honour to acknowledge the receipt of your letter of the 30th ultimo, calling my attention to the circumstances attending the sale of the steamer Sumter at Gibraltar, and I have the honour to state to you, in reply, that the Law Officers of the Crown have already the case before them.

"I have, &c.
(Signed) "RUSSELL."

Earl Russell to Mr. Adams.†

" Sir,
" With reference to my letter of the 1st instant, in which I acknowledged the receipt of your letter of the 30th ultimo, respecting the sale of the Sumter at Gibraltar, I have now the honour to inform you that Her Majesty's Naval and Military officers at that port have received instructions not to give any protection to that vessel beyond the waters of Gibraltar; but it will of course be clearly understood that those instructions do not preclude the owners of the Sumter, if that vessel should be taken by United States' cruisers, from appealing, according to the usage and practice of international law, to the prize court in the United States against the captors; nor will Her Majesty's Government be precluded from taking any course which may appear hereafter to them proper, if the Sumter, now assumed to be British property, should be hereafter condemned, or otherwise dealt with in any manner which might not be, in their judgment, warranted by international law.

"I have, &c.
(Signed) "RUSSELL."

Mr. Adams had, on the 3rd January, 1863, telegraphed to the American Consul at Gibraltar that Captain Bryson, commanding the United States' war-steamer Chippewa, was to endeavour to capture the Sumter should she leave Gibraltar under the British flag; and on the 19th January, 1863, he again telegraphed, "The Sumter should be captured if she goes out of the British waters on the high seas. If she have nominal British papers she must be sent home for adjudication as prize." The American Consul, on the 21st January, answered as follows:—"Your telegram communicated to our Commanders: Sumter coming again and provisioning to-day." She sailed from Gibraltar on the 7th February, was not captured, and reached Liverpool on the 13th.‡ At Liverpool she remained until the 3rd July, 1863, when she sailed as a merchant-vessel, without armament, and carrying as freight some heavy ordnance, which could not possibly have been used on board of her. She had undergone repairs, but all fittings for warlike purposes had been removed from her, and she had been renamed the "Gibraltar." While in port she had been carefully watched by order of Her Majesty's Government, as a precaution lest she should be in any way armed or equipped for war; and she was not permitted to clear till it had been satisfactorily shown that she was in no respect so equipped and had no armament.§ She is believed to have been wrecked at last in attempting to enter Charleston. After the time when she entered the harbour of Gibraltar she never appeared at sea as an armed ship, nor was employed to commit hostilities against the United States or their citizens.

With reference to the sale and transfer of this vessel, the views of Her Britannic Majesty's Government were further expressed in the following letter addressed to the Minister of the United States in London:—||

Earl Russell to Mr. Adams.

" Sir,
" There are several statements in your letter of the 14th of March respecting the sale of the Sumter, at Gibraltar, to a British owner, upon which, if any advantage were likely to result from further discussion of the subject, I should feel it right to observe. But it appears to me sufficient to

Introductory statement.

* Appendix, vol. ii, p. 52.

§ Ibid., pp. 64-80.

† Ibid., p. 64.

‡ Ibid., p. 59.

|| Ibid., p. 62.

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say, that you seem to have confounded, both in your reasoning upon the subject and in your reference to authority, the positions of a neutral and belligerent in regard to the sale of ships belonging to another belligerent, and to have forgotten, as in the instance of your reference to a statement in a passage on the law of prize, that no neutral State, such as Great Britain now is, administers prize law in favour of either belligerent.

"The neutral and belligerent have distinct rights in the matter: the neutral has a right to acquire such property offered to him for purchase, but the belligerent may, in the particular circumstances of the case, not recognize the transfer of such property as being that of his enemy, only parted with to the neutral in order to protect it from capture on the high seas. The Prize Court of the belligerent, when property so circumstanced is brought before it, decides whether the transfer is fair or fraudulent.

"The British Government, when neutral, is not bound to refuse to a British subject the right to acquire by purchase a vessel which a belligerent owner may desire to part with, but it would not deny the right of the adverse belligerent to ascertain, if such vessel were captured by its cruisers, whether the vessel had rightfully, according to the law of nations, come into the possession of the neutral; and if Great Britain were herself belligerent, she would not complain of a neutral Government allowing one of its subjects to acquire by purchase a vessel which her adversary might desire to part with, though she would have the right of capturing such vessel on the high seas, and sending it before the Prize Court for judgment as to whether the vessel had rightfully, according to the law of nations, become the property of a neutral owner.

"I have, &c.
(Signed) "RUSSELL."

The course pursued by Her Majesty's Government in this case was adhered to in 1864 in the case of the Confederate ship Georgia. It was afterwards judged expedient by the Government to prohibit vessels of war belonging to either belligerent from being dismantled or sold in British ports.

It is not the duty of a neutral Government to prohibit the sale within its territory of a ship owned by a belligerent to a neutral purchaser. This is a transaction which in no way concerns the neutral Government, and with which it cannot be called upon to interfere. Under certain circumstances indeed—as in the case of a ship of war driven by superior force to take refuge in a neutral port—such a sale may be liable to be declared void by a prize court of the other belligerent. But this is a jurisdiction exercised by prize courts alone. Until so set aside, the sale (even in the case supposed above) is valid everywhere, and operates to transfer the property to the neutral purchaser. Nor again can a neutral Government be called upon to apply rules applicable exclusively to vessels of war to a vessel which, having originally been armed for war, has been disarmed and sold as aforesaid, unless it clearly appear that the sale was a fictitious transaction, intended to disguise, without altering, the true character of the ship.

The Nashville.

The Nashville, an armed steamer commissioned as a ship of war of the Confederate States, arrived at the British dependency of Bermuda on the 30th October, 1862, having sailed from Charleston on the 26th.* Her Commander applied for leave to draw a supply of coals from Her Majesty's dockyard, but this request was refused. She procured coal from a private yard, and sailed on the 4th November. On the 21st November she entered the harbour of Southampton, having, on her way, taken and destroyed an American packet-ship (the Harvey Birch), and on the 22nd went into dock for repairs.† On the same day directions were sent from the Foreign Office that she "should not be allowed to equip herself more completely as a vessel of war, or to take in guns or munitions of war."

On the same 22nd of November Mr. Adams addressed a Note to Earl Russell in reference to the Nashville, inclosing certain papers received from the Consul of the United States in London.‡ From statements in these papers it would, Mr. Adams alleged, appear that the Nashville was not equipped under a commission as a ship of war, nor even with the pretence of a letter of marque; and, further, that she was sent to England with the avowed design that she should be refitted in English ports and made a formidable vessel of war, and that the officers who came in her should be put in command of two other ships which were alleged to be then fitting-out in the ports of Great Britain for the purpose of carrying on war against the United States. He proceeded to request that Her Majesty's Government would cause inquiry to be made, and would adopt such measures as the case, upon investigation, might seem to demand. "This inquiry may be solicited to the ascertainment of two classes of facts: the first, as to the authority possessed by this vessel to commit so aggressive an act on the citizens of a friendly Power, and then to claim a refuge and recognition in the harbours of Great Britain. The second, in case

* Appendix, vol. ii, p. 87.

† Ibid., pp. 90 and 91.

‡ Ibid., p. 92.

the nature of that authority be deemed sufficient—at least in the view of Her Majesty's Government—as to the purposes for which the ship is alleged to have come across the ocean, to wit, the making more effective preparation in the ports of Great Britain for carrying on a war against the people of a friendly nation. In the former case, the question will arise whether the vessel be or be not subject to due process of law as a common disturber of the peace of the world; in the second, whether a recognized belligerent shall or shall not be permitted with impunity to violate the terms of Her Majesty's Proclamation forbidding the fitting out, within the ports of Great Britain, of any armament intended to be used against a nation with which she is at peace."

The foregoing Note was immediately answered by Earl Russell, as follows:—

*Earl Russell to Mr. Adams.**

"Foreign Office, November 23, 1861.

"Lord Russell presents his compliments to Mr. Adams, and begs leave to acquaint him that his letter and the inclosure shall receive the immediate attention of Her Majesty's Government.

"Lord Russell has already given directions that no infringement of the Foreign Enlistment Act shall be permitted in regard to the Nashville."

On the 28th November, 1861, Earl Russell addressed to Mr. Adams, with reference to his Note of the 22nd, a further Note, which was as follows:—

Earl Russell to Mr. Adams†

"Foreign Office, November 28, 1861.

"The Undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, has the honour to inform Mr. Adams, Envoy Extraordinary and Minister Plenipotentiary of the United States at this Court, that his note of the 22nd instant has been the subject of careful and anxious consideration by Her Majesty's Government.

"Mr. Adams, after reciting the capture and destruction by fire of the United States' merchant-ship on the high seas by order of the Commander of the armed steamer called the Nashville, and the subsequent arrival of the Nashville in the port of Southampton, asks for an inquiry as to two classes of facts: the first, 'as to the authority possessed by this vessel to commit an aggressive act on the citizens of a friendly Power, and then to claim a refuge in the harbours of Great Britain'; the second, 'in case the nature of that authority be deemed sufficient, at least in the view of Her Majesty's Government, as to the purposes for which the ship is alleged to have come across the ocean, to wit, the making more effective preparations in the ports of Great Britain for carrying on war against the people of a friendly nation.'

"Her Majesty's Government have directed their inquiries to both these points, and also to the state of the law as applicable to the facts thus by them ascertained.

"With regard to the first point, the Undersigned has to state that the Nashville appears to be a Confederate vessel of war; her commander and officers have commissions in the so-styled Confederate Navy; some of them have written orders from the Navy Department at Richmond to report to Lieutenant Pegram 'for duty' on board the Nashville, and her crew have signed articles to ship in the Confederate Navy.

"In these circumstances the act done by the Nashville, of capturing and burning on the high seas a merchant-ship of the United States, cannot be considered as an act 'voluntarily undertaken by individuals not vested with powers generally acknowledged to be necessary to justify aggressive warfare,' nor does it at all 'approximate within the definition of piracy.'

"Such being the answer of Her Majesty's Government on the first point raised by Mr. Adams, the Undersigned passes to the second.

"The Undersigned stated to Mr. Adams, in his informal note of the 23rd instant, that he had already given directions that no infringement of the Foreign Enlistment Act should be permitted in regard to the Nashville. In fact, directions had already been given to prevent the Nashville from augmenting her warlike forces within Her Majesty's jurisdiction in contravention of the Foreign Enlistment Act.

"With respect to the allegation made by Mr. Adams that some of the officers of the Nashville are to be put in command of vessels now fitting out in British ports for purposes hostile to the Government of the United States, the Undersigned can only say that, if reasonable evidence can be procured to that effect, all parties concerned who shall be acting in contravention of the Foreign Enlistment Act shall be legally proceeded against, with a view to the punishment of the persons and to the forfeiture of the vessels.

"Having thus answered Mr. Adams upon the two points to which his attention was called, the Undersigned has only further to say that, if, in order to maintain inviolate the neutral character which Her Majesty has assumed, Her Majesty's Government should find it necessary to adopt further measures within the limits of public law, Her Majesty will be advised to adopt such measures.

"It is the earnest desire of Her Majesty to preserve intact the friendly relations between Her Majesty and the United States of America.

"The Undersigned, &c.

(Signed)

"RUSSELL."

* Appendix, vol. ii, p. 25.

† Ibid., p. 101.

On the 2nd December, 1861, Mr. Adams answered the foregoing Note as follows:—

*Mr. Adams to Earl Russell.**

"Legation of the United States, London, December 2, 1861.

"The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States, has the honour to acknowledge the receipt of a note from the Right Honourable Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, dated on the 28th of November, and in answer to the note of the Undersigned soliciting an investigation into the case of the armed steamer *Nashville*.

"Whilst the Undersigned regrets that Her Majesty's Government has determined to give what he cannot but think a liberal construction to the evidence furnished of the character of the voyage of the *Nashville*, it is yet a source of great satisfaction to him to learn the intention expressed by the Government to apply all its power to the prevention of measures taken within this kingdom by ill-disposed persons to fit out enterprises of a hostile character to the United States. The Undersigned entertains no doubt that this information, which has been already transmitted by him to this Government, will be received with much pleasure.

"The Undersigned, &c.

(Signed) *"CHARLES FRANCIS ADAMS."*

Reports of the nature of the repairs which the *Nashville* was undergoing, showing that nothing whatever was being done to fit her more completely as a vessel of war, were from time to time received at the Foreign Office from the Senior Naval Officer at Southampton, and were forwarded to Mr. Adams for his information. Mr. Adams, in acknowledging the receipt of these reports, added, "It is a source of gratification to him (Mr. Adams) to observe the continued supervision exercised by Her Majesty's Government over the outfit of that vessel."—(28th December, 1861).†

On the 15th December, 1861, the United States' war-steamer *Tuscarora* arrived in Southampton Water. She remained there, occasionally shifting her anchorage, until after the departure of the *Nashville*, which occurred on the 3rd February following. While the two ships remained in British waters, Her Majesty's Government enforced with strict impartiality the rule which had previously been enforced by the French authorities at Martinique in the case of the *Sumter* and *Iroquois*, that, if either should sail, the other should not follow within twenty-four hours afterwards. The facts are stated in reports addressed by Captain Patey as Senior Naval Officer to Her Majesty's Board of Admiralty.‡ Both ships coaled at Southampton.

In July, 1862, the *Tuscarora* returned to Southampton, and remained in that port undergoing repairs for three weeks or thereabouts.

General Course pursued by Her Britannic Majesty's Government, and by other Maritime Powers in regard to the reception of Belligerent Cruisers.

From the beginning of the war to the end of it, Her Britannic Majesty's Government scrupulously observed, in respect of vessels entering British ports or waters under the flag of either belligerent, the duties of a neutral Power. The cruisers of both were admitted upon the same terms; and the regulations which it was found necessary to make from time to time in order to prevent the hospitality thus accorded from being abused, whether by design or through inadvertence, were impartially applied to both. Unremitting care and vigilance were employed to prevent these necessary precautions from being infringed or eluded, and especially to prevent any belligerent vessel from engaging in hostilities, or from enlisting seamen or otherwise increasing its military force, within British territory, or using such territory as a station from whence to observe and attack enemy's ships. The difficulties occasioned, especially in Her Majesty's Colonial possessions, by the resort of belligerent cruisers to British ports and waters, were considerable, and called for the exercise of much judgment and moderation on the part of the local authorities. By United States' cruisers the ports and waters of Her Majesty's dominions were resorted to for coaling and other purposes more frequently than by vessels of the Confederate States. The impartial neutrality maintained in these respects by Her Majesty's Government was nevertheless made a frequent subject of complaint by the Government of the United States, which continued to insist that Confederate vessels ought to have been treated as pirates, or at least excluded altogether; whilst the Confederate States, on their part, complained that the regulations enforced were unequal in operation, and unduly disadvantageous to a belligerent whose ports and coasts were under blockade.

The neutrality observed by Great Britain was observed also throughout the war by other maritime Powers. By them, as by Great Britain, the armed vessels of both belligerents were admitted impartially and indifferently into their ports, subject to such regulations and conditions as they respectively judged it expedient to impose for their own protection, and to prevent their hospitality from being abused.

* Appendix, vol. ii. p. 102.

† *Ibid.*, p. 103.

‡ For a summary of the proceedings of the two vessels, see Appendix, vol. ii. p. 129.

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Statement on International Rights and Duties ; on the Powers
which were possessed by Her Britannic Majesty's Govern-
ment of preventing unlawful Equipments, and the Manner
and Circumstances in and under which these Powers were
exercised during the War.

With a view to enable the Tribunal to form a just appreciation of the circumstances under which certain vessels were procured from ports in Great Britain by the Government of the Confederate States, it will be proper to state, in the first place, some general propositions, applicable to the subject, which are believed by Her Britannic Majesty's Government to be in accordance with international law and practice; secondly, to explain the means of prevention which were at the command of Her Majesty's Government; and, thirdly, to describe in some detail the manner in which those means of prevention were exercised during the war.

General Propositions.

Her Britannic Majesty's Government believes the following propositions to be in accordance with the principles of international law and the practice of nations:—

1. A neutral Government is bound to exercise due diligence, to the intent that no place within its territory be made use of by either belligerent as a base or point of departure for a military or naval expedition, or for hostilities by land or sea.

2. A neutral Government is not, by force of the above-mentioned obligation or otherwise, bound to prevent or restrain the sale within its territory, to a belligerent, of articles contraband of war, or the manufacture within its territory of such articles to the order of a belligerent, or the delivery thereof within its territory to a belligerent purchaser, or the exportation of such articles from its territory for sale to, or for the use of, a belligerent.

3. Nor is a neutral Government bound, by force of the above-mentioned obligation or otherwise, to prohibit or prevent vessels of war in the service of a belligerent from entering or remaining in its ports or waters, or from purchasing provisions, coal, or other supplies, or undergoing repairs therein; provided that the same facilities be accorded to both belligerents indifferently; and provided also that such vessels be not permitted to augment their military force, or increase or renew their supplies of arms or munitions of war, or of men, within the neutral territory.

4. The unlawful equipment, or augmentation of force, of a belligerent vessel within neutral waters being an offence against the neutral Power, it is the right of the neutral Power to release prizes taken by means or by the aid of such equipment or augmentation of force, if found within its jurisdiction.

5. It has been the practice of maritime Powers, when at war, to treat as contraband of war vessels specially adapted for warlike use and found at sea under a neutral flag in course of transportation to a place possessed or occupied by a belligerent. Such vessels have been held liable to capture and condemnation as contraband, on proof in each case that the destination of the ship was an enemy's port, and provided there were reasonable grounds for believing that she was intended to be sold or delivered to or for the use of the enemy.

6. Public ships of war in the service of a belligerent, entering the ports or waters of a neutral, are, by the practice of nations, exempt from the jurisdiction of the neutral Power. To withdraw or refuse to recognize this exemption without previous notice, or without such notice to exert, or attempt to exert, jurisdiction over any such vessel, would

be a violation of a common understanding, which all nations are bound by good faith to respect.

7. A vessel becomes a public ship of war by being armed and commissioned, that is to say, formally invested by order or under the authority of a Government with the character of a ship employed in its naval service and forming part of its marine for purposes of war. There are no general rules which prescribe how, where, or in what form the commissioning must be effected, so as to impress on the vessel the character of a public ship of war. What is essential is, that the appointment of a designated officer to the charge and command of a ship likewise designated be made by the Government, or the proper Department of it, or under authority delegated by the Government or Department, and that the charge and command of the ship be taken by the officer so appointed. Customarily, a ship is held to be commissioned when a commissioned officer appointed to her has gone on board of her and hoisted the colours appropriated to the military marine. A neutral Power may indeed refuse to admit into its own ports or waters as a public ship of war any belligerent vessel not commissioned in a specified form or manner, as it may impose on such admission any other conditions at its pleasure, provided the refusal be applied to both belligerents indifferently; but this should not be done without reasonable notice.

8. The act of commissioning, by which a ship is invested with the character of a public ship of war, is, for that purpose, valid and conclusive, notwithstanding that the ship may have been at the time registered in a foreign country as a ship of that country, or may have been liable to process at the suit of a private claimant, or to arrest or forfeiture under the law of a foreign State. The commissioning Power, by commissioning her, incorporates her into its naval force; and by the same act which withdraws her from the operation of ordinary legal process assumes the responsibility for all existing claims which could otherwise have been enforced against her.

9. Due diligence on the part of a sovereign Government signifies that measure of care which the Government is under an international obligation to use for a given purpose. This measure, where it has not been defined by international usage or agreement, is to be deduced from the nature of the obligation itself, and from those considerations of justice, equity, and general expediency on which the law of nations is founded.

10. The measure of care which a Government is bound to use in order to prevent within its jurisdiction certain classes of acts, from which harm might accrue to foreign States or their citizens, must always (unless specifically determined by usage or agreement) be dependent, more or less, on the surrounding circumstances, and cannot be defined with precision in the form of a general rule. It would commonly, however, be unreasonable and impracticable to require that it should exceed that which the Governments of civilized States are accustomed to employ in matters concerning their own security or that of their own citizens. That even this measure of obligation has not been recognized in practice might be clearly shown by reference to the laws in force in the principal countries of Europe and America. It would be enough, indeed, to refer to the history of some of these countries during recent periods, for proof that great and enlightened States have not deemed themselves bound to exert the same vigilance and employ the same means of repression, when enterprises prepared within their own territories endangered the safety of neighbouring States, as they would probably have exerted and employed had their own security been similarly imperilled.

11. In every country where the Executive is subject to the laws, foreign States have a right to expect—

(a.) That the laws be such as in the exercise of ordinary foresight might reasonably be deemed adequate for the repression of all acts which the Government is under an international obligation to repress;

(b.) That, so far as may be necessary for this purpose, the laws be enforced and the legal powers of the Government exercised.

But foreign States have not a right to require, where such laws exist, that the Executive should overstep them in a particular case, in order to prevent harm to foreign States or their citizens; nor that, in order to prevent harm to foreign States or their citizens, the Executive should act against the persons or property of individuals, unless upon evidence which would justify it in so acting if the interests to be protected were its own or those of its own citizens. Nor are the laws or the mode of judicial or administrative procedure which exist in one country to be applied as constituting a rule or standard of comparison for any other country. Thus, the rules which exist in Great Britain as to the admission and probative force of various kinds of testimony, the evidence necessary to be produced in certain cases, the questions proper to be tried by a jury, the functions of the Executive in regard to the prevention and prosecution of offences, may differ, as the

organization of the magistrature and the distribution of authority among central and local officers also differ, from those which exist in France, Germany, or Italy. Each of these countries has a right, as well in matters which concern foreign States or their citizens, as in other matters, to administer and enforce its own laws in its own forum, and according to its own rules and modes of procedure; and foreign States cannot justly complain of this, unless it can be clearly shown that these rules and modes of procedure conflict in any particular with natural justice, or in other words, with principles commonly acknowledged by civilized nations to be of universal obligation.

In connection with the foregoing propositions are to be taken the three Rules stated in Article VI of the Treaty, and accepted by Her Britannic Majesty's Government in the manner expressed in that Article.

Neutrality Laws—Law of the United States.

The case of a vessel which is dispatched from a neutral port to or for the use of a belligerent, after having been prepared within the neutral territory for warlike use, is one which may be regarded from different points of view, and may fall within the operation of different principles. The ship herself may be regarded merely as an implement or engine of war, sold or manufactured to order within neutral territory, and afterwards transported therefrom, and the whole transaction as falling within the scope of the principles applicable to the sale, manufacture, shipment, and transportation of articles contraband of war; or, on the other hand, the preparation and despatch of the ship may be viewed as being really and in effect the preparation and commencement of a hostile expedition. The circumstances of each case can alone determine from which of these two points of view it may most fitly be regarded, and to which class the transaction ought to be assigned. But the difficulty of drawing a clear, precise, and intelligible line between these two classes of transactions has always been considerable in theory, and still greater in practice; and it was enhanced to the utmost during the Civil War by the ingenuity and audacity of American citizens, who were engaged in carrying on hostilities against the Government of the United States, and were desirous of availing themselves for this purpose of the shipbuilding and manufacturing resources of Great Britain. This will sufficiently appear from the narrative which follows; and it will be seen also how serious and incessant were the trouble and embarrassment which these enterprises occasioned to Her Majesty's Government. It is by the many difficulties encountered and by the experience acquired during the war that Her Majesty's Government was finally led to the conclusion that it was expedient not only to enlarge the scope of its municipal law in relation to this subject beyond what has hitherto been deemed necessary in any other country, but further, to accept for itself, and propose to other Powers, rules of international obligation somewhat more stringent and comprehensive than are to be found in earlier expositions of the law of nations.

The acts of which the Government of the United States is understood to complain belong to a class which have not commonly been made an object of prohibitory legislation. In few countries, or in none, according to the information received by Her Britannic Majesty's Government, did the law directly prohibit such acts, or make any definite provision for preventing them, at the time when this war began, except in the United States and Great Britain. Laws are not made till the necessity for them has arisen. In the United States the necessity arose at a very early period in the history of that Commonwealth, and has again repeatedly presented itself at various times. The first maritime war in which the United States held the position of a neutral Power was that which commenced in 1793, when the French Republic declared war against Great Britain and against the United Provinces of the Netherlands. Within three months after the declaration of war several privateers had been procured, equipped, armed and commissioned in ports of the United States, to cruise under the French flag against the commerce of Great Britain, with which the United States were at peace. They were not only fitted out in American ports, but were owned, officered, and manned in large proportion by American citizens. The measures adopted by the Executive of the United States to restrain these enterprises proved inadequate; they were renewed from time to time, and the persons who took part in them were not punished; and on the 5th June, 1794, an Act of Congress, intituled "An Act in addition to the Act for the Punishment of Certain Crimes against the United States" was passed, for amending the law in this respect. This Act was a temporary one, to continue in force for two years, and thenceforth until the end of the then next session of Congress. Its provisions were re-enacted on the 2nd March, 1797, and were made perpetual by an Act of Congress passed on the 24th April, 1800. It was not completely effectual. From the published reports of cases decided in the American

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Courts, it appears that depredations on British commerce were again and again committed by French privateers, subsequently fitted out and armed for war in ports of the United States.

In March 1806 an expedition against Spain (with which the United States were at peace) was fitted out in New York by one Miranda, a native of Peru, who had served in the French Republican Army under Dumouriez. This expedition, which consisted of an armed vessel carrying 18 guns and two schooners, sailed for its destination. Orders were issued for arresting it, but they were too late. Persons who participated in it were afterwards prosecuted, but were acquitted by the jury before whom they were tried.

In the year 1810 war broke out between Spain and her American Colonies, and in 1816, Portugal engaged in the war on the side of Spain. The United States remained neutral. It appears from the correspondence which subsequently passed between the Government of the United States, and the Governments of Spain and Portugal, as well as from the published reports of cases decided in the Courts of the United States, that a considerable number of privateers were at various times during the war, but chiefly in the earlier part of it, fitted out, manned, and armed, in ports of the United States, for the purpose of erasing against the commerce of Spain and against that of Portugal, and that large numbers of Spanish and Portuguese ships were captured by these privateers. In the despatches of the Portuguese Minister at Washington not fewer than twenty-six of such privateers are mentioned as having been fitted out and armed at a single American port; and fifty ships belonging to Portuguese citizens are stated to have been captured between the years 1816 and 1819 inclusive. It was further stated that the privateers were for the most part not only fitted out, but owned and commanded, by citizens of the United States. The facts alleged do not appear to have been disputed by the Government of the United States. In answer to the first representation of the Portuguese Minister, in which he indicated ten ships which had armed, or were believed to be then arming, at Baltimore, Mr. Monroe, then Secretary of State, wrote as follows:—

The United States' Secretary of State to the Portuguese Minister at Washington.

"Sir,

"Washington, December 27, 1816.

"I have had the honour to receive your letter of the 20th instant, complaining of certain equipments of armed vessels from Baltimore, and of instructions given to the commander of one of those vessels to attack conditionally the vessels of your Sovereign, the King of Portugal and Brazil. You are aware that these vessels are equipped without any authority from this Government, and on pretexts very different from those which you assign. You are also aware that the existing laws do not authorize the President to interfere in such cases, and it is your object to obtain such amendment of them as may be sufficient for the purpose.

"I have communicated your letter to the President, and have now the honour to transmit to you a copy of a Message which he has addressed to Congress on the subject, with a view to obtain such an extension by law of the Executive power, as will be necessary to preserve the strict neutrality of the United States in the existing war between Spain and the Spanish Colonies, and effectually to guard against the danger in regard to the vessels of your Sovereign, which you have anticipated.

"As soon as a law may be passed on this subject, I shall have the honour of communicating it to you, and I avail myself of this opportunity of assuring you of the great interest which the President takes in cultivating the most kindly relations with your Sovereign, his subjects and dominions.

"I have, &c.

(Signed) "JAMES MONROE.

"Chevalier J. Correa de Serra."

On the 26th December, 1816, President Madison communicated to Congress the following Message:—

"Washington, December 26, 1816.

"It is found that the existing laws have not the efficacy necessary to prevent violations of the obligations of the United States as a nation at peace toward belligerent parties, and other unlawful acts on the high seas by armed vessels equipped within the waters of the United States.

"With a view to maintain more effectually the respect due to the laws, to the character, and to the neutral and pacific relations of the United States, I recommend to the consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped or in a course of equipment with a war-like force, within the jurisdiction of the United States; or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions of the cases of merchant-vessels furnished with the defensive armaments used on distant and dangerous expeditions, and of a private commerce in military stores permitted by our laws, and which the law of nations does not require the United States to prohibit.

(Signed) "JAMES MADISON."

Papers relating to the same subject were at the same time laid by the Committee on

Foreign Affairs before the House of Representatives. Among these was one by Mr. Monroe, then Secretary of State, in which he reported as follows:—

“ The provisions necessary to make the laws effectual against fitting out armed vessels in our ports for the purpose of hostile cruising seem to be:—

“ 1st. That they should be laid under bond not to violate the Treaties of the United States or the obligations of the United States under the law of nations, in all cases where there is reason to suspect such a purpose on foot, including the cases of vessels taking on board arms and munitions of war applicable to the equipment and armament of such vessels subsequent to their departure.

“ 2nd. To invest the Collectors, or other Revenue officers where there are no Collectors, with power to seize and detain vessels under circumstances indicating strong presumption of an intended breach of the law: the detention to take place until the order of the Executive on a full representation of the facts and thereupon can be obtained. The statute-book contains analogous powers to this above suggested. (See particularly the 11th section of the Act of Congress of April 25, 1808.)

“ The existing laws do not go to this extent. They do not authorize the demand of security in any shape, or any interposition on the part of the magistracy as a preventive where there is reason to suspect an intention to commit the offence. They rest upon the general footing of punishing the offence where, if there be full evidence of the actual perpetration of the crime, the party is bonded over after the trial to the penalty denounced.”

On the 3rd March, 1817, a short Act was passed, by the first section of which provision was made (by the introduction of the words “ colony, district, or people ”) for the case of a belligerent community or body of persons not recognized as a sovereign State.

The second and third sections were as follows:—

“ Sec. 10. And be it further enacted, That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign Prince or State, or of any colony, district, or people, with whom the United States are at peace.

“ Sec. 11. And be it further enacted, That the Collectors of the Customs be, and they are hereby, respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign State, or of any colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding Section of this Act.”

It is to be remarked that these provisions were enacted on a representation by the Secretary of State that it had become necessary, in order to make the laws against fitting out armed vessels effectual, to invest the collectors or other revenue officers with a preventive power to seize and detain on a reasonable suspicion, or at any rate on a “ strong presumption,” of an intended breach of the law. The only cases in which Congress was willing to confer this power were those defined in these sections, neither of which could by any latitude of construction be so extended as to include a vessel which at the time of its departure, was neither armed nor laden with a cargo consisting principally of arms and munitions of war. Nor would the second section embrace any vessel not owned wholly or in part by citizens of the United States; and the security which the collectors were authorized to take was a security only against a hostile employment of the ship by the “ owner or owners ” thereof, and (in cases within the second section) by “ such ” owners; that is to say, by owners being American citizens.”

On the 20th April, 1818, a further Act of Congress was passed, intituled “ An Act in addition to the Act for the punishment of certain crimes against the United States, and to repeal the Acts therein mentioned.” By this Act the Acts of 1794, 1797, and 1817, were repealed, and their provisions were revised and consolidated, but without being made more stringent in any material respect. It has never since been repealed, altered, or amended, and continues at the present day a part of the law of the United States.

Notwithstanding the legislation of 1817 and 1818, the Spanish and Portuguese Ministers continued from time to time to complain to the Government of the United States of depredations on Spanish and Portuguese commerce by vessels fitted out and armed in ports of the United States. By the Spanish Minister, writing on the 2nd November, 1817, it was affirmed that “ the Act of Congress of the 3rd March, 1817, has in no wise lessened the abuses by which the laws are evaded, and which render entirely illusory the laudable

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purposes for which they were enacted." "From the greater part," he continued, "of the ports of these States there frequently sail a considerable number of vessels, with the premeditated intention of attacking the Spanish commerce, which carry their armament concealed in the hold. It rarely happens that they can be arrested, inasmuch as the Collectors of Customs say that they have not at their disposition the naval force necessary to effect it. On the other hand, armed vessels, under the flag of the insurgents, enter into the ports of the Union, and not only supply themselves with all necessities, but also considerably increase the means they already have of destroying the trade of Spain, as has recently been the case at New York, whereby the (so-called) privateers of His Majesty's revolted provinces, which are in reality nothing more than pirates, manned by the scum of all countries, enjoy greater privileges than the vessels of independent Powers."

These remonstrances were repeatedly renewed during the year 1818. On the 7th May, 1818, he wrote—

"I would have considered myself dispensed from the necessity of again pressing this subject on your attention, if it had appeared possible for me to restrain these armaments by the employment of judicial means; but, unfortunately, the Act of Congress of the 20th of April last, for preserving neutrality with foreign nations, and others already in force, although highly judicious, are easily eluded; and, although these practices are public and notorious throughout the whole Union, His Majesty's Consuls advise me that though a deficiency of evidence they cannot be restrained by a regular application of the law."

And, on the 9th June, 1818, he represented that there were then at Baltimore four privateers, three of which were notoriously fitted out there, whilst the fourth was a schooner captured from Spanish owners. All these vessels, he affirmed, were commanded by citizens of the United States, and manned, with scarcely an exception, by American crews; but he added that, though these facts were well known, it was in vain to seek evidence to prove them, "as, a great portion of the commercial people of Baltimore being interested in the cases which produce my present reclamations, no one is willing to come forward and offer testimony against what is termed the general interest."

It is needless here to refer particularly to more recent instances of vessels fitted out in ports of the United States for expeditions against countries with which the United States were at peace. These instances are well-known.

In referring to the facts mentioned above it is by no means the intention of Her Majesty's Government to cast any reproach upon the Government or people of the United States. Prohibitory laws directed against offences of this kind are liable to be evaded or infringed without fault on the part of the Government; and they have accordingly been infringed in the United States by acts much more flagrant than any of those now charged against Great Britain. The enforcement of such laws is indeed beset by special difficulties. It is usually difficult to ascertain the existence of an unlawful intention. The class of acts which they prohibit are easy to conceal or disguise; the occasions which call them into operation occur but seldom; and when these occasions arise, it becomes needful either to create a special machinery for the purpose, or to rely upon the officers entrusted with the execution of the ordinary laws of trade and navigation—laws which are framed on the principle of avoiding as much as possible all minute scrutiny and unnecessary interference.

Many cases of alleged violations of the Acts hereinbefore mentioned, have been brought before Courts of the United States, and various parts of them have received from those Courts a judicial interpretation. These interpretations have been, and still are, regarded as authoritative expositions of the law of the United States bearing on this subject.

It results from the foregoing statement—

1. That the law of the United States regarding this matter arose out of the prevalence within the United States of the acts which it was designed to prevent, and that it has been altered and amended in order to prevent more effectually the recurrence of those acts.
2. That it has existed in its present form for more than fifty years; that in the course of that time recourse has frequently been had to it; and that it has always been held, and is now held, by the Legislative authority in the United States to be adequate for its purpose.
3. That, notwithstanding this law, vessels have from time to time been fitted out and armed within the United States, to cruise and commit hostilities against nations with which the United States were at peace, and that severe losses and injuries have been inflicted on those nations by the depredations of such vessels.

Further, it has been constantly held and maintained by the United States (and particularly during the discussions with Spain and Portugal above referred to), that the powers possessed by the Government of the United States to prevent the fitting-out of vessels within the territory of the Republic, were such only as could be shown to be

actually vested in the Government by the laws and constitution of the United States in force for the time being; and that, provided those powers had been *bona fide* exercised, the United States were not responsible for any losses, however severe, inflicted by any vessel or vessels, however numerous, fitted and armed within their territories.

It has been the practice of the Executive authorities of the United States, in enforcing the law, to act upon information laid before them by Consuls of foreign Powers, or other persons interested officially or otherwise in preventing the acts prohibited by the law, and to require the persons furnishing such information to produce evidence in support of it; and the importance of such information, to enable the neutral Power to intervene in proper cases, was expressly pointed out in the letter of Mr. Jefferson to Mr. Hammond of the 5th September, 1793, annexed to the Treaty of the 19th November, 1794, between the United States and Great Britain.

Law of Great Britain.

The law of Great Britain on this subject was, at the time of the happening of the events out of which the questions submitted to the Arbitrators arose, embodied in an Act of Parliament passed in the year 1819, and intituled "An Act to Prevent the Enlisting or Engagement of His Majesty's Subjects to serve in Foreign Service, and the Fitting out or Equipping, in His Majesty's Dominions, Vessels for Warlike Purposes without His Majesty's License." This Act is commonly referred to as the "Foreign Enlistment Act." At the time when it was proposed to Parliament, it was reported and believed that expeditions were being prepared in England for the assistance of the Spanish-American Colonies, which were then at war with their mother-country. The circumstances, therefore, which gave rise to the passing of the British law, were similar to those which gave rise to the passing of the corresponding laws in the United States, with the difference that in the United States armed vessels had actually been fitted out, and had actually committed hostilities and depredations against the commerce of a friendly Power, whereas in Great Britain it was only apprehended that some vessels were about to be fitted out and dispatched with a like purpose.

The Legislature of Great Britain, in framing the law of 1819, appears to have adopted as its model the law which had been passed by the Congress of the United States in the preceding year. The British Act is, however, as regards the matters now in question, more stringent, rigorous, and comprehensive than that of the United States.

In regard to the fitting out of vessels for belligerent purposes, the section of the Act of the United States which defines the offence is as follows:—

"Sec. 3. And be it further enacted, That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign Prince or State, or of any colony, district, or people, to enslave or commit hostilities against the subjects, citizens, or property of any foreign Prince or State, or of any colony, district, or people with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be guilty of a high misdemeanor, and shall be fined not more than 10,000 dollars, and imprisoned not more than three years: and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States."

The section of the British Act which defines the offence is as follows:—

"VII. And be it further enacted, That if any person within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel with intent or in order that such ship or vessel shall be employed in the service of any foreign Prince, State or Potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign State, colony, province, or part of any province or people, as a transport or store ship, or with intent to cruise or commit hostilities against any Prince, State, or Potentate, or against the subjects or citizens of any Prince, State, or Potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom His Majesty shall not then be at war; or shall, within the United Kingdom or any of His Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to His Majesty, issue or deliver any commission for any ship or

vessel, to the intent that such ship or vessel shall be employed as aforesaid; every such person so offending shall be deemed guilty of a misdemeanour, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's Customs or Excise, or any officer of His Majesty's Navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of Customs or Excise or the laws of trade and navigation, to seize such ships and vessels as aforesaid, and in such places and in such manner in which the officers of His Majesty's Customs or Excise and the officers of His Majesty's Navy are empowered respectively to make seizures under the laws of Customs and Excise or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such Courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of Customs and Excise, or of the laws of trade and navigation.

The 10th and 11th sections of the American Act (which are commonly referred to as the "bonding clauses") were not introduced into the British Act; but, inasmuch as neither of these clauses could have been applied with effect to any of the vessels which sailed from British ports during the war, and the acts of which have given rise to the claims now in question, they may be dismissed from consideration in comparing the two Acts for the purposes of this discussion.

During the forty-two years which elapsed between the passing of the Act of 1819 and the year 1862, only one case founded on an alleged violation of that Act appears to have been brought to trial before a Court. This was a criminal prosecution on a charge of having fitted out in England in the year 1849, during a civil war in the Kingdom of the Two Sicilies, a ship intended for the naval service of persons in arms against the Government of that Kingdom.

It results from the foregoing statements that the law of Great Britain, as it existed at the time of the Civil War in the United States, was such as in the exercise of due foresight might reasonably be deemed adequate for enabling the British Government to perform its obligations as a neutral Government. It was modelled upon the law of the United States, which had long existed and had frequently been brought under consideration in the Courts of that country; it equalled that law and even surpassed it in stringency; and offences against it (if any there were) had been so rare as to have left hardly any trace in the judicial records of Great Britain.

The functionaries to whom the power of seizing vessels for contraventions of the Foreign Enlistment Act was committed by law, were the officers of the Customs stationed at the several ports of the United Kingdom. These officers are under the direction of the Commissioners of Customs resident in London, who are themselves under the general superintendence and control of the Lords Commissioners of the Treasury or Finance Department of Her Majesty's Government.

The police or peace-officers charged with the prevention and detection of crimes and offences in general within the United Kingdom are under the control of the local authorities in the several counties and boroughs under the general supervision of the Secretary of State for the Home Department.

The official advisers of the Government on questions of law are the Attorney-General, the Solicitor-General, and the Queen's Advocate. To these functionaries (whom it is usual to designate collectively as the "Law Officers of the Crown") the Government refers for advice on such questions of law as may arise in the administration of public affairs, and it guides itself by their advice in dealing with such questions.

To the foregoing statement respecting the law of Great Britain so far as it specifically relates to the matters now in question, it is proper to add that, according to the general principles of the constitutional law of the Kingdom—

1. The Executive cannot deprive any person, even temporarily, of the possession or enjoyment of property, nor subject him to bodily restraint, unless by virtue and in exercise of a power created and conferred on the Executive by law.

2. No person can be visited with a forfeiture of property, nor subjected to any penalty, unless for breach of a law, nor unless such breach can be proved to the satisfaction of a competent legal Tribunal, by testimony given on oath in open Court, subject to the rules of procedure established here for the due administration of justice. Every witness is liable to be cross-examined by the accused party or his advocate.

3. No person can be compelled to answer a question put to him in a Court of law if the question is such that, by answering it, he would incur the risk of a penalty or of a prosecution before a criminal Tribunal. Statements on hearsay are not admissible as evidence.

These general principles apply equally, whether the object sought to be attained be the prevention or punishment of an injury to the State, or to any citizen of the State, or to any other person or persons whomsoever.

It may be further observed that during the whole period to which the questions submitted to the Arbitrators relate, every case of alleged infringement of the British Foreign Enlistment Act, brought to trial within the United Kingdom, was required to be proved to the satisfaction of a jury.

Effect of the Blockade.

After these observations on the nature, extent, and limitations of the powers of prevention which by the laws and constitution of Great Britain were vested in Her Majesty's Government, it will be convenient to state the circumstances in the midst of which the Government was called upon to exercise those powers during the war.

It has been mentioned above that one of the first acts of the Government of the United States, after the outbreak of the war, was to set on foot a general blockade of the ports, harbours, and sea-coasts of the Confederate States. These States being hemmed in to the landward on every side, except on the remote southern frontier of Texas, by States which remained faithful to the Union, it was designed by this blockade to cut them off entirely from all traffic and intercourse with neutral countries, especially those from which the people of the South had been accustomed to draw their supplies of manufactured goods, and to which they had been wont to export vast quantities of raw produce. It was not only a commercial blockade on a prodigious scale; it was much more. It was a blockade which, so far as it was successful, shut up and isolated a population of many millions, inhabiting a vast territory and accustomed to export and import largely, from all external commerce whatsoever. At the same time the blockade itself was for a long time very imperfectly maintained, the navy of the United States being quite inadequate for the purpose and needing to be supplemented by vessels of all kinds hastily procured, and the fleet thus composed being distributed along an immense coast-line. These facts are notorious.

It is evident that a blockade of this character offered extraordinary inducements, not only to the people of the Confederate States themselves, but to traders in Europe, to use every effort in order to elude it wherever an opening could be discovered. Accordingly, in the year 1862, an active traffic began to be carried on with some of the blockaded ports; and for the purposes of this traffic it was found profitable to procure or construct vessels of a peculiar class, specially adapted for speed and for protection against the fire of blockading squadrons, and differing in various ways, externally and internally, from ships employed in ordinary trade. Recourse was had, for this purpose, to the ports and building-yards of Great Britain, which are accustomed to supply shipping to purchasers of all countries, and are the principal seat of this kind of industry.

Her Majesty's Government, though aware that the blockade was for a considerable time not completely effective, and though frequently urged to disregard it, both by the Confederate States and by persons desirous of trading with them, refused to do so, and recognized it from first to last. British subjects who attempted to trade with the blockaded ports were warned by Her Majesty's Proclamation (issued at the commencement of the war) that they would incur the risk of the capture and confiscation of their property, and that against that risk their Government would not protect them. On the other hand, the Government neither did nor could—forcibly or by process of law—prohibit its subjects, or persons within its dominions, from engaging in such trade, or from selling, or constructing, or purchasing vessels adapted for that purpose. Such a course, indeed, would have been not only a departure from the ordinary practice and usage of neutral nations, but in conflict with those considerations of general expediency on which the rules of international law are founded. The right of blockade is a belligerent right, and the enforcement of it belongs to the belligerent, and not to neutral Powers. That blockades, to be binding, must be made effective by the blockading Power, is a settled and salutary rule; and this is indeed the sole protection of neutrals against an undue and extravagant extension of the right of blockade. It follows, of necessity, that to the exertions of the blockading Power, and to those alone, the task of making them effective must be left.

Representations of Mr. Adams.

At all the principal sea-ports of Great Britain, the United States maintained Consuls or Consular officers. It was the duty of these officials, in their respective localities, to

keep a watchful eye on whatever might tend to endanger the security or interests of the United States; to use the utmost diligence in informing themselves of any actual or contemplated violations of law which might prove injurious to those interests; to communicate their information to Mr. Adams, the Minister of the United States in London, and to act on such instructions as they might receive from him in matters within the range of their functions. And it was the duty of Mr. Adams, in all cases which, in his judgment, demanded action or inquiry on the part of the Government of Great Britain, to lay before that Government facts sufficient to call for and justify such action or inquiry. In the course of the years 1861, 1862, 1863, 1864, and 1865, many representations were addressed by Mr. Adams to Her Majesty's Government respecting vessels which he believed to be either actually employed in carrying on trade with blockaded ports in articles contraband of war or other things, or to be preparing for such employment; and also with respect to other vessels which he believed to be intended to be used as privateers or commissioned ships of the Confederate States in cruising and carrying on war against the United States. To complaints of traffic carried on with blockaded ports, or in articles contraband of war, it was answered, on the part of Her Majesty's Government, that these were enterprises which Her Majesty's Government could not undertake to prevent, and the repression of which belonged to the United States as a belligerent Power. Allegations, on the other hand, that vessels were being prepared for cruising or carrying on war were immediately referred to the proper officers of the Government at the several localities for careful investigation and inquiry. If, on such investigation, it appeared by sufficient *prima facie* evidence that any illegal act was being or had been committed, the vessels were forthwith seized, and proceedings instituted according to law; if not, the result was at once communicated to Mr. Adams, and directions were given to the local authorities to watch closely the vessels as to which his suspicions had been aroused.

The Bermuda.

The first of these cases was that of the steam-ship *Bermuda*. On the 15th August, 1861, Earl Russell received from Mr. Adams the following note:—*

Mr. Adams to Earl Russell.

"My Lord,

"From information furnished from sources which appear to me entitled to credit, I feel it my duty to apprise Her Majesty's Government that a violation of the Act prohibiting the fitting out of vessels for warlike purposes is on the point of being committed in one of the ports of Great Britain, whereby an armed steamer is believed to be about to be dispatched with the view of making war against the people of the United States.

"It is stated to me that a new screw-steamer, called the *Bermuda*, ostensibly owned by the commercial house of Fraser, Trenholme, and Company, of Liverpool, well known to consist in part of Americans in sympathy with the insurgents in the United States, is now lying at West Hartlepool ready for sea. She is stated to carry English colours, but to be commanded by a Frenchman. She is two-masted, brig-rigged, lower part of funnel black and upper part red, black hull, with a narrow red stripe round the moulding level with the deck, no poop, wheel-house painted white, six white boats slung in iron davits. She has neither figure-head nor bowsprit. Her bottom is painted pink up to the water-line.

"This steamer is armed with four guns, and she has been for some time taking in stores, cases, and barrels believed to contain arms and ammunition of all kinds ordinarily used in carrying on war.

"This cargo is nominally entered as destined to Havana in the Island of Cuba, but her armament and cargo are of such a nature as to render it morally certain that the merchants who claim to be the owners can have no intention of dispatching her on any errand of mercy or of peace.

"I am informed that this vessel will sail in a day or two; I therefore feel under the highest obligation to submit the information I have obtained as the ground for an application for a prompt and effective investigation of the truth of the allegations whilst there is time. Not doubting the earnest disposition of Her Majesty's Government faithfully to adhere to the principles of neutrality to which it has pledged itself, I ask, on the part of the United States, for no more than a simple enforcement of the law, in case it shall appear that evil-minded persons are seeking to set it at naught.

"I pray, &c.
(Signed) "CHARLES FRANCIS ADAMS."

On the same 15th August, Earl Russell informed Mr. Adams (as the fact was), that he had lost no time in communicating on the subject with the proper Department of the Government. Inquiries were immediately directed to be made on the spot, and it was found, as the result of such inquiries, that there was no reason to believe that the vessel

* Appendix, vol. ii, p. 133

was intended for warlike use. Earl Russell, on the 22nd August, 1861, wrote to Mr. Adams as follows:—

Part III.

Introductory statement.

Earl Russell to Mr. Adams.

“Sir,
“I acquainted you in my letter of the 15th instant that I had lost no time in communicating with the proper Department of Her Majesty's Government respecting the steam-vessel fitting out at Hartlepool, which you believed was about to be dispatched with a view of making war against the people of the United States.

“I have now the honour to state to you that the result of the inquiries into this case having been submitted to the proper Law Officer of the Crown, Her Majesty's Government have been advised that there is not sufficient evidence to warrant any interference with the clearance or the sailing of the vessel.

“The 7th section of the Foreign Enlistment Act, 59 Geo. III, cap. 69, applies to the equipment of a vessel for the purpose of being employed in the service of a foreign State as a transport or cruiser, but has no reference to the mere nature of the cargo on board, and there is at present no proved intention that the vessel itself is to be employed for a warlike purpose.

“The persons engaged in the venture must take the consequences which, according to the law of nations, may happen to ensue during transit, owing to a portion of the cargo loaded by them being contraband of war.

“I am, &c.
(Signed) “RUSSELL.”

The Bermuda was doubtless intended for blockade-running, for which purpose alone she was employed. She sailed from Liverpool with cargo for Savannah, and succeeded in entering that port and returning thence to Liverpool. On her second voyage she was captured by a United States' ship, and was condemned as prize.

The vessels to which Mr. Adams next called the attention of Her Majesty's Government were the Oresto or Florida and the Alabama, originally known as “No. 290.” The facts which are within the knowledge of Her Britannic Majesty's Government, relating to the preparation, departure, and subsequent history of these two vessels, are fully stated in Parts V and VI of this Case.

The Hector.

In November 1862, Mr. Adams made inquiry of Earl Russell respecting a vessel then in course of construction at Glasgow, which subsequently became Her Majesty's ship Hector. He was informed in answer (as the fact was) that the vessel was being built for Her Majesty's Government.†

The Georgiana.

The next case was that of the Georgiana.

On the 17th January, 1863, Earl Russell received from Mr. Adams the subjoined Note and inclosure:—

Mr. Adams to Earl Russell.‡

“My Lord,
“It has become my painful duty to call your Lordship's attention to one more of the cases in which the neutral territory of Great Britain is abused by evil-disposed persons for the worst of purposes, in the present war. I have the honour to transmit a copy of a letter addressed to me by the Consul of the United States at London, giving the particulars based upon credible information received by him, the authority for which it is not in his power at present to disclose. As the vessel is known to be on the eve of departure from the port of Liverpool, I fear I have not the time necessary to procure corroborative evidence from that place. Under these circumstances I feel myself impelled to make this representation without further delay. I have reason to believe that the vessel in question is intended to pursue a similar course with that formerly called No. 290, to wit, the destruction of the commerce of the United States. I therefore solicit the interposition of Her Majesty's Government, at least so far as to enable me to procure further evidence to establish the proof of the allegations here made, in season for the prevention of this nefarious enterprise.

“Praying, &c.
(Signed) “CHARLES FRANCIS ADAMS.”

* Appendix, vol. ii, p. 138.

† Ibid., p. 143.

‡ Ibid., p. 147.

Part III.

Introductory statement.

(Inclosure.)

Mr. Morse to Mr. Adams.

"Sir,

"I have information, on evidence which secures my belief, that the iron screw-steamer Georgiana, Captain Davidson, now in Sandon Graving Dock, Liverpool, is intended for a Confederate privateer, and is now fitting for the business of privateering. She was built in the yard of Mr. Laurie, at Glasgow. Mr. George Wiggs of New Orleans, contracted to have her built. She is now, I presume, but temporarily (for security, until she gets off) registered in the name of Niel Matheson, Secretary of the Confederate Aid Association at Glasgow. She is so constructed that armour plating could be put on to her at any time after leaving the port where she was constructed.

"She is a well-built, fast vessel, rigged for fore and aft sails, and is over 400 tons, net measurement. She left Glasgow for Liverpool on the 3rd of the present month, and is now at the last-named port preparing for sea. She has port-holes cut for four rifled cannon, and bolts, &c., arranged for them, since she left Glasgow; and also a portion of her armour plating put on, and small-arms enough for a crew of privateersmen. She will take some forty or fifty men, all told, from Liverpool, and make up a full crew after leaving. Among those now engaged is a gunner, once a sergeant in the Royal Artillery. She is advertised for Nassau, and will pretend to go out as a regular trader.

"I regret that I am unable to sustain the above statement by the affidavits of my informants; but I am bound in honour not to use their names. My information concerning this steamer, for the last five or six weeks, confirms the accuracy of the statement, and I have full confidence in its truth.

"The Georgiana will call at Queenstown for coal.

"Your obedient Servant,

(Signed) "F. H. MORSE, Consul."

Immediately on receiving the said Note and inclosure, Earl Russell sent copies of them to the proper Departments of the Executive Government, with a request that instant inquiry might be made; and on the same 17th January, 1863, he wrote to Mr. Adams as follows:—*

Earl Russell to Mr. Adams.

"Sir,

"I have the honour to acknowledge the receipt this day of your letter of the 16th instant, inclosing a letter from the United States' Consul in London, giving the particulars based upon credible information received by him, the authority for which it is not in his power at present to disclose, respecting an iron screw steamer named the Georgiana, Captain Davidson, now lying in the Sandon Graving Dock, at Liverpool, which he believes to be intended for a Confederate privateer, and to be now fitting out for the business of privateering.

"I have communicated copies of your letter and of its inclosure to the Board of Treasury, and to the Secretary of State for the Home Department, without delay; and I have requested that orders might be sent by telegraph to the proper authorities at Liverpool, enjoining them to take such steps in the matter as may legally be taken.

"I think it right, however, to observe that Her Majesty's Government cannot be answerable for any difficulty which may be experienced in carrying out those orders, in consequence of the evidence on which the statement of the United States' Consul is made being withheld from them.

"I have, &c.

(Signed) "RUSSELL."

A telegraphic despatch directing an immediate investigation was on the same day sent to Mr. Price Edwards, the Collector of Customs at Liverpool.

The vessel and her papers were examined accordingly, and, on the following day (Sunday), the Collector reported by telegraph the results of such examination as follows:—†

"Georgiana, British, 407 tons register; brig rig; cargo, merchandise, provisions, and drugs; no guns on deck; no fitting for guns on board; one cwt. powder; iron bulwarks; no port-holes for guns; no fittings for guns on board; a fast vessel; forty, crew; not fitted as a privateer; better adapted for running the blockade; cleared out for Nassau; now in the Mersey, and is intended to leave to-day, say 4 P.M.

"Sunday, January 18."

Detailed reports of the examination were subsequently made by the officers employed for the purpose, and were as follows:—‡

Report of the Surveyor of Customs, Liverpool, to the Collector of Customs, Liverpool.

"Sir,

"Sunday, January 18, 1863.

"Last night, about ten o'clock, I received the telegram sent to you relative to the Georgiana, but, being too late, I had no alternative but to wait till this morning early, when I went in search of the vessel, and found that she had hauled into the river on Saturday.

* Appendix, vol. ii, p. 148.

† Ibid., p. 149.

‡ Ibid., p. 151.

" I gave directions to the Acting Assistant Surveyor, Mr. Webb, to accompany me to her, but, as we were going, I met the master of her (Davidson), who informed me that all the ship's papers were ashore.

" I then accompanied the master, while Webb went to the vessel. On my inspecting the papers, I found nothing to induce the suspicion that she was intended for privateering. She had a great many bills of lading, in which the goods (cargo) were consigned to parties at Nassau.

" Amongst other things, there were a great many packages of drugs, which convinced me that they were intended to run through the blockade.

" I also saw the ship's articles, upon which the names of all the crew stood. The amounts set against their respective names, forty in number, were not higher rates of wages than usual; and his charter-party was in the usual style, and destined him to Nassau, Havana, or New Orleans.

" On the return of the officer from the ship, he stated that she had no port-holes, no guns, and no fittings for guns on deck, and nothing to denote that she was intended for a privateer.

" Under these circumstances I am respectfully of opinion that she is in no way subject to detention.

" Very respectfully, &c.

(Signed) "C. MORGAN, Surveyor.

" The Collector."

*Declaration of the Acting Assistant Surveyor of Customs, Liverpool.**

" I have been in the service of the customs nearly twenty-seven years. I entered the service as a tide-waiter. Yesterday morning (Sunday) the surveyor, Mr. Morgan, called at my house (for it was my turn off duty) about 7:30, and asked me if I knew where the Georgiana was lying. I told him she had gone into the river on Saturday, and was then lying in the Mersey, opposite the watch-house. I then accompanied him towards the boarding station at the Prince's Dock Pier-head. As we were going down we met the captain, Davidson. He said he was going to the ship. Mr. Morgan then desired me to go to the ship in the river, while he turned back with the captain to see his papers. I went on board the Georgiana at about 9:30 A.M. She was about half a mile off the great landing-stage. I went on board and had the hatches removed in order to examine the cargo. She was not above half full. She appeared to have a quantity of tea and bale goods on board; also, oil, tallow, and provisions, which I saw. There was no objection made to my going into any part of the vessel. I have seen the vessel several times before, both while she lay in the Sandon docks and in the graving-dock. She is an ordinary iron screw-steamer, i.e., not built stronger than the ordinary merchant-vessel. She is brig-rigged, and not fore and aft. She has no port-holes, and no places fitted for mounting guns. It is impossible that she could have port-holes without a total change in the bulwarks, there being no support to sustain the recoil of the guns. There were eighteen or nineteen iron plates on board, lying on the top of the cargo; they were of the same thickness as the hull of the vessel—that is, the ordinary thickness for merchant-vessels.

" I am satisfied, from the construction, general fitting, and adaptations of the ship, that she is in no way fitted for a privateer. I specially noticed the vessel after she came to the port, and on her arrival made several inquiries about her, and so satisfied was I then, and still am, that she was not intended for warlike purposes, that I did not consider myself called upon to make any report concerning her.

(Signed) "J. WEBB."

" Signed and declared before me, at the Custom-house, Liverpool, this 19th day of January, 1863.

(Signed) "S. PRICE EDWARDS, Collector."

A letter was also sent by the Secretary of State for the Home Department to the Mayor of Liverpool, requesting that inquiry should be made by the police respecting the vessel. Inquiry thus made confirmed the reports of the officers of Customs, that she was not fitted or intended for war. She was a vessel constructed with a view to speed for the purpose of running the blockade, slightly and hastily built. Two port-holes had been pierced in her on each side; these, it was stated, might be used to enable her to carry guns for her own protection, as many merchant-vessels do, but were intended (as the shipbuilder's foreman, who superintended the piercing of them believed), chiefly for the escape of water, of which, from her great speed, she would ship large quantities in a heavy sea.†

All the information thus obtained was transmitted at once to Mr. Adams.

The Georgiana sailed from Liverpool on the 21st January, 1863, with a general cargo for Nassau, and thence for Charleston, as a blockade-runner. In attempting to enter Charleston harbour, she was chased and fired upon by the blockading vessels, and was run aground and wrecked.‡

The Phantom.

On the 27th March, 1863, Earl Russell received from Mr. Adams the subjoined Note and inclosure:—§

Mr. Adams to Earl Russell.

" My Lord,

" Legation of the United States, London, March 26, 1863.

" I have the honour to transmit, for your information, the copy of an extract of a letter received by me from Mr. Dudley, the Consul at Liverpool, giving some particulars of hostile outfit making

* Appendix, vol. ii, p. 162.

† Ibid., pp. 154, 155, 156.

‡ Ibid., p. 160.

§ Ibid., p. 167.

Part III.

Introductory
statement.

at that place. It is proper to add, in correction of a statement therein contained, that Mr. Dudley has to day informed me that the Southerner has not yet reached Liverpool. There is little doubt, however, of its ultimate destination.

"I pray, &c.
(Signed) CHARLES FRANCIS ADAMS."

(Inclosure.)

Mr. Dudley to Mr. Adams.

"Sir,
"On Saturday last Mr. William C. Miller and Son launched from their yard, in Liverpool, an iron screw-steamer, called the Phantom, built for Fraser, Trenholm, and Co. This vessel is large and to have great speed. The contract is not less than seventeen nautical miles per hour. Her engines are being made by Fawcett, Preston, and Co. She has three port-holes on each side. Captain Bullock, Captain Tessier, Mr. Prioleau, the leading members of the firm of Fraser, Trenholm, and Co., Mr. Thomas of the firm of Fawcett, Preston, and Co., and others were present at the launch. She is intended for the South, either as a privateer or blockade-runner: there is no doubt about this, I think. She will turn up a privateer. Her draught of water will be light, and with her powerful engines her speed will be very fast. When afloat she will be a most dangerous craft to our commerce, if armed with two or three guns.

"I have on several occasions referred to the steamer built at Stockton for Fraser, Trenholm, and Co., called the Southerner. This vessel came here yesterday either to coal or else to fit out as a privateer. There is no doubt about this vessel. I suppose it will be impossible for me to obtain legal evidence against these two vessels, and nothing short of this will satisfy this Government.

"I am, &c.
(Signed) THOMAS H. DUDLEY."

The receipt of this Note was immediately acknowledged by Earl Russell, and Mr. Adams was informed that the proper Departments of Her Majesty's Government would be requested to make immediate inquiries on the subject.

On the same 27th March, 1863, Earl Russell sent copies of the said Note and inclosure to the proper Departments, with a request that instant inquiry should be made, and on the following day he wrote to Mr. Adams as follows:—*

Earl Russell to Mr. Adams.

"Sir,
"With reference to my letter of yesterday's date, I have the honour to inform you that I have received from the Home Office a copy of a letter which has been addressed to the Mayor of Liverpool respecting the two vessels Phantom and Southerner, stated by the United States' Consul at that port to be fitting out for the service of the so-styled Confederate States.

"In that letter the Mayor of Liverpool is instructed to make immediate inquiries as to these vessels, or whichever of them is now at Liverpool, and to ascertain whether there is any reason to believe that they or either of them are or is being equipped, furnished, fitted out, or armed with the intent to commit hostilities against the United States' Government; and if so, to report whether any evidence on oath can be procured in order to proceedings being taken under the Foreign Enlistment Act.

"I have accordingly the honour to suggest that, as the United States' Consul at Liverpool has stated in his letter to you that there is no doubt with respect to the vessel named the Southerner, you should instruct that officer to furnish the Mayor of Liverpool with the information on which his belief is founded.

"I have, &c.
(Signed) RUSSELL."

The officers of Customs at Liverpool made prompt and careful inquiry into the matters alleged by Mr. Adams, and inquiry was also made under the direction of the Mayor of Liverpool, and the result of such inquiries was, on the 3rd April, 1863, communicated by Earl Russell to Mr. Adams in the following Note:—†

Earl Russell to Mr. Adams.

"Sir,
"Since the date of my letter of the 27th ultimo, I have received from the Board of the Treasury a Report made by the Commissioners of Customs, under date of the 31st ultimo, and from the Secretary of State for the Home Department a Report from the Mayor of Liverpool, bearing the same date containing the result of inquiries made by them in regard to the vessels Phantom and Southerner, denominated by you in your letter of the 28th ultimo as intended for the naval service of the so-called Confederate States.

"It appears from the first of these reports that the Phantom was built at the yard of Mr. W. C. Miller, and is now in the Clarence graving dock. Her length is 193 feet; her breadth, 22 feet; her depth, 12 feet; her gross tonnage, 321; and her probable register tonnage, 160.

"From the considerable space appropriated to her engines, and from her model, there seems to be no doubt a high rate of speed will be obtained; and from her light draught of water she is well adapted

* Appendix, vol. ii, p. 168.

† Ibid., p. 170.

for running the blockade; but as she has steel plates only half an inch thick, and as the angle irons which compose the deck beams are only five by three and half inches thick, and as, moreover, she has no ports except for water-way (three in all), and a hurricane-house on deck, the surveyor of Customs considers that she is not intended to carry guns, and that she is not fit for a privateer.

"The Mayor of Liverpool reports that the *Phantom* was launched on the 21st of March from the yard of Messrs. Miller and Co., and that her engines are being made and fitted by Messrs. Fawcett, Preston, and Co., of Liverpool; that she is in an unfinished state, and not expected to proceed to sea under a fortnight or three weeks. No distinct information could be obtained as to what she is intended for, but strong impression exists that she is destined for the purpose of running the blockade.

"The *Sootherner* has not yet arrived at Liverpool.
"A strict watch will be kept as regards both vessels.

"I have, &c.
(Signed) "RUSSELL."

On the 7th April, 1863, Earl Russell received from Mr. Adams the following Note:—*

Mr. Adams to Earl Russell.

"My Lord,
"I have the honour to acknowledge the reception of notes from your Lordship, dated the 27th and 31st of March, and two on the 3rd of April, in reply to certain representations of mine concerning vessels believed to be in preparation at Liverpool, for the carrying on of hostilities at sea, against the commerce of the United States. It is a source of great satisfaction to me to recognize the readiness which Her Majesty's Government has thus manifested to make the investigations desired, as well as to receive the assurances of its determination to maintain a close observation of future movements of an unusual character, that justify suspicions of any evil intent.

"I pray, &c.
(Signed) "CHARLES FRANCIS ADAMS."

Mr. Adams subsequently (viz., on the 16th, 19th, and 23rd May, 1863)† sent to Earl Russell copies of several sworn depositions made by a detective police officer at Liverpool who had been employed to watch the ship-building yards, and by other persons. These depositions tended to show that the building and fitting of the *Phantom* was superintended by persons in the employ of Messrs. Fawcett, Preston, and Co., a firm of ironfounders and engineers carrying on a very extensive business at Liverpool (a member of which firm was the registered owner of the vessel). It also appeared from the depositions that a Captain Bullock (to whom reference will be made hereafter) took part in superintending the work; and it was further sworn by two of the deponents (who were police-constables) that the vessel was entirely eased in steel-plates; that she had three port-holes on each side, with steel-plate shutters; that she had very little room for cargo; and that she appeared to them to be built for war purposes.

Immediately on the receipt of these depositions, further inquiries were directed by Her Majesty's Government, and were prosecuted accordingly, and the result of them was, on the 27th May, 1863, communicated by Earl Russell to Mr. Adams in the following Note:—‡

Earl Russell to Mr. Adams.

"Sir,
"I had the honour, in my note of the 3rd ultimo, to communicate to you the result of the inquiries which had been instituted by Her Majesty's Government, on the receipt of your letter of the 26th of March, in which you denounced the *Phantom* steamer as being in course of construction at Liverpool as a vessel of war for the service of the so-styled Confederate States.

"The evidence which I was then able to lay before you seemed to show that you had been misinformed in this respect; but as the depositions enclosed in your letters of the 16th, 19th, and 23rd instant appeared to call for further inquiry, Her Majesty's Government did not lose a moment in causing such further inquiry to be made, and I now proceed to communicate to you the result.

"1st. With regard to the allegation that the *Phantom* has port-holes, the Collector at Liverpool has obtained from the Surveyor a report, from which it appears that, though the *Phantom* has ports on deck, it is evident from their size and situation that they are intended for the escape of water, and not for guns, which the strength of the deck is not sufficient to carry; moreover, the permanent fittings on deck would interfere with the working of guns. The Surveyor adds that, in his opinion, the *Phantom* is intended for mercantile pursuits, but whether of a lawful character or for running the blockade there is no evidence to show.

"2ndly. The Commissioners of Customs, since the date of my last letter, have caused a strict watch to be kept upon the *Phantom*, but nothing has transpired worthy of special notice, and the several papers in regard to this vessel, including the depositions forwarded by you, having been submitted to the legal adviser of that Board, he has reported that there is no evidence to warrant the slightest interference with her. Indeed it is stated that during a recent interview between that officer and Mr. Squarey, the Solicitor to the United States' Consul at Liverpool, Mr. Squrey admitted

* Appendix, vol. ii, p. 171.
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† Ibid., pp. 171, 173, and 176.

‡ Ibid., p. 177.

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that there was no case against the *Phantom*, and that the recoil of a heavy gun would shake her to pieces.

"I have, &c.
(Signed) "RUSSELL."

In a subsequent Note to Mr. Adams, dated 30th May, 1863, referring to the same subject, Earl Russell wrote as follows:—*

"The Surveyor further observes that it is difficult for any one at all familiar with the construction and fittings of vessels intended for warlike purposes to account for the supposition that the *Phantom* is destined for such a service, her hull being of the most fragile character that can be conceived for a sea-going vessel, her steel plates being but a quarter of an inch thick, and her iron frame of the same proportion."

The *Phantom* sailed on the 10th June, 1863, from Liverpool for Nassau, and is believed to have been employed as a blockade-runner. She was never used for war.

The Southerner.

On the 3rd June, 1863, Mr. Adams addressed to Earl Russell the following note respecting a vessel called the *Southerner*, alleged to be fitting out at Stockton-on-Tees:—†

Mr. Adams to Earl Russell.

"My Lord,

"I have the honour to submit to your consideration copies of two depositions relating to a vessel which has been fitting out at Stockton-on-Tees, for some purpose not usual in times of peace. This vessel is called the *Southerner*, and is the same to which I called your Lordship's attention in my note of the 26th of March last. I think it can scarcely admit of a doubt that she is intended to carry on the same piratical mode of warfare against the commerce of the United States now practised by the so-called *Alabama* and the *Oreto*. The person superintending her equipment appears to be the same who was equally active in the case of No. 290. I therefore feel it is my duty to call your Lordship's attention to the case, in order that the proper measures may be taken in season to prevent any evil consequences to the peace of the two countries from the escape of such a vessel.

"I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

In this note were inclosed two depositions, sworn by persons who had inspected the vessel. These depositions, however, furnished no evidence that she was in any way fitted or intended for war. It appeared that she had two small guns mounted on her decks; but these were afterwards described by Mr. Dudley himself as "small guns, such as are usually found in passenger vessels of her size."

In answer to Mr. Adams's Note, Earl Russell, on the 4th June, 1863, wrote to Mr. Adams as follows:—‡

Earl Russell to Mr. Adams.

"S'r,

"Your letter of yesterday respecting the *Southerner* was unfortunately not delivered at the Foreign Office till 8:50 p.m., some time after the business of the day was ended and the office closed.

"I have, at the earliest possible hour this morning, communicated with the Treasury and Home Department, and I have requested that orders may at once be sent by telegraph to the proper authorities, to pay immediate attention to the circumstances set forth in your letter.

"I have, &c.
(Signed) "RUSSELL."

Orders were forthwith sent accordingly, and the Collectors of Customs at Stockton and Middlesborough-on-Tees, at West Hartlepool, and Liverpool respectively, were instructed by telegraph to watch the vessel, to report any suspicious circumstance, and, should there be any legal proof of a violation of the Foreign Enlistment Act, to delay her, or, if necessary, detain her for the directions of the Board of Customs.

The Collector of Customs at Stockton, on the same day (4th June, 1863), reported concerning the *Southerner* as follows:—§

"She appears to me to be calculated for neither running nor fighting, but is certainly a very poor merchant-ship, built, I should say, expressly for carrying bales of cotton. The owners appear to me to have calculated, when they contracted about twelve months ago for building her, that the stock of cotton in America would have been from some cause or other released ere now. And, as

* Appendix, vol. ii, p. 179.

† Ibid., p. 187.

‡ Ibid., p. 190.

§ Ibid., p. 193.

freights upon the article would have ruled high for fast vessels, they doubtless expected to reap great profits. For the present, however, they would seem to have been disappointed. And I understand that a sister ship built in the Tyne for the same parties, has, for want of more profitable employment, been sent to Alexandria on some miserably low freight.*

This report was confirmed by the Collector and the Surveyor of Customs at West Hartlepool and the Acting Surveyor of Customs at Liverpool. These officers reported that she appeared to be intended for commercial purposes; that her ports were far too small for working guns, and were designed for letting away water; and that the two guns on board of her were ordinary signal-guns, mounted on carriages such as are generally used by merchant-vessels of her class, and were, as so mounted, merely fit for firing signals with blank cartridge.*

On the 12th June, 1863, Earl Russell wrote as follows:—†

Earl Russell to Mr. Adams.

“Sir,

“At the same time that I communicated to the Lords of the Treasury and to the Secretary of State for the Home Department, as I informed you in my letter of the 4th instant, the statements respecting the Southerner contained in your letter of the 3rd instant, I submitted those statements also to the consideration of the Law Advisers of the Crown; and I have since learned from them that, in their opinion, the evidence supplied by those statements would not support a charge against the vessel that she is so equipped, or fitted out, or destined, as to constitute a breach of the provisions of the Foreign Enlistment Act, and that it consequently did not afford sufficient warrant for arresting the vessel.

“The greater portion of the two depositions inclosed in your letter consists of hearsay matter, or statements of mere belief, which, according to American equally with British law, are inadmissible in a Court of justice, and upon which Her Majesty’s Government could not legally proceed.

“Attention will, nevertheless, continue to be paid to the vessel, with a view of guarding, as far as possible, against her being equipped in this country in a manner inconsistent with the provisions of the Foreign Enlistment Act.

“Foreign Office, June 12, 1863.

“I have, &c.
(Signed) “RUSSELL.”

On the 3rd July, 1863, he again wrote as follows:—‡

Earl Russell to Mr. Adams.

“Sir,

“I had the honour, on the 12th of June, to communicate to you the result of the inquiries which had up to that time been instituted by Her Majesty’s Government with reference to the statements respecting the vessel Southerner, contained in your letter of the 3rd of that month. I however added that attention should nevertheless continue to be paid to that vessel, with the view of guarding, as far as possible, against her being equipped in this country in a manner inconsistent with the provisions of the Foreign Enlistment Act.

“I have now to inform you, in fulfilment of that assurance, that Her Majesty’s Government considered it desirable to request the Board of Admiralty to associate with the Custom-house Surveyor at Liverpool an officer well acquainted with the build and equipment of vessels of war, with instructions to survey the Southerner, and to report the result to Her Majesty’s Government.

“That officer’s Report has now been received, and I have the honour to acquaint you that it appears from it that the Southerner is an ordinary built iron screw steam passenger and cargo vessel of 1,560 tons, fitted with engines of 300 horse-power; that she is also fitted with top-gallant, forecastle, and poop-deck, with deck-houses continuous fore and aft with the same, in the same manner as the Inman line of screw-boats sailing between Liverpool and New York; that she is fitted up aft, under the poop-deck, with cabin accommodation for about sixty-six saloon passengers; the forecastle for the crew, and deck-houses for the ship’s officers; that her holds are appropriated for the reception of cargo, and that she is fitted with steam winches for working the same.

“The Admiralty Surveyor further reports that he finds, upon examination, that her top sides are of iron plates three-eighths of an inch thick, and are in no way fitted or secured for the working of guns; and that she has two gangways fitted, one on each side amidships, for the purpose of working her cargo.

“The Surveyor, in conclusion, says that upon fully examining the Southerner he cannot find anything, with regard to construction or fittings, that would lead him to suppose that she was intended for belligerent purposes.

“I have, &c.
(Signed) “RUSSELL.”

On the 9th August, 1863, the Southerner sailed from Liverpool, with a clearance for Alexandria, via Cardiff. She proceeded to Alexandria, and was employed in the Mediterranean in the conveyance of cotton and of passengers, and was never used for war.§

* Appendix, vol. ii, pp. 201 and 207.

† Ibid., p. 203.

‡ Ibid., p. 208.

§ Ibid., p. 209.

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statement.The *Alexandra*.

On the 28th March, 1863, application was made by Mr. Dudley to the Collector of Customs at Liverpool, for the seizure of a vessel stated to be lying in one of the docks in the port of Liverpool, and called the *Alexandra*.* Mr. Dudley at the same time laid before the Collector six sworn depositions, one made by himself, and the others by various other persons, tending to show that she was constructed for warlike use, and that she was intended for the service of the Confederate States.

Copies of the depositions were, on the 31st March, received by Earl Russell from Mr. Adams, together with a Note, in which Mr. Adams stated that he would remit no exertion to place in the hands of Her Majesty's Government all the information that could be obtained. The receipt of this Note was on the same day acknowledged by Earl Russell, and instructions were immediately given that whatever measures could legally be taken in view of the facts thus brought to the knowledge of Her Majesty's Government should be adopted.† The depositions were at the same time laid before the Law Officers of the Crown, in order that they might advise the Government thereon.

On the 3rd April, 1863, Earl Russell further wrote to Mr. Adams, as follows:—‡

Earl Russell to Mr. Adams.

"Sir,

"Foreign Office, April 3, 1863.

"With reference to my letter of the 31st ultimo, I have the honour to inform you that the Secretary of State for the Home Department has instructed the Mayor of Liverpool to cause immediate inquiries to be made with the view of ascertaining whether the *Alexandra*, denominated by you in your letter of the 30th ultimo, is being equipped, furnished, fitted out, or armed, with the intention of her being employed in the service of the so-called Confederate States, with intent to commit hostilities against the Federal Government of the United States; and if this should appear to be the case, the Mayor is further instructed to adopt whatever steps can legally be taken in the matter.

"I have, &c.

(Signed)

"RUSSELL."

On the 5th April, 1863, the *Alexandra* was, pursuant to the direction of Her Majesty's Government, seized by the officers of the Customs at Liverpool, under the powers created by the 7th Section of the Foreign Enlistment Act;§ and proceedings were soon afterwards instituted in the Court of Exchequer by the Attorney-General on behalf of the Crown, in order to obtain a condemnation of the ship under the provisions of that Act.

Mr. Adams was informed that orders to seize the vessel had been given, and he, on the 6th April, 1863, wrote to Earl Russell as follows:—||

Mr. Adams to Earl Russell.

"My Lord,

"Legation of the United States, London, April 6, 1863.

"I have the honour to acknowledge the reception of your Lordship's note of the 5th instant, in answer to mine of the 30th ultimo, making certain representations in regard to the character of a vessel in Liverpool known as the *Alexandra*. It is with the most lively satisfaction that I learn the decision of Her Majesty's Government to detain that vessel. Believing that such an act, at the present moment, is calculated to defeat the sanguine hopes of the common enemies of both nations, to sow the seeds of dissension between them, I shall remit no effort to procure all the information possible to support it. To that end I have, agreeably to your Lordship's suggestion, sent the necessary instructions to the Consul of the United States at Liverpool to put himself in communication with the authorities designated at that place to pursue the subject.

"I pray, &c

(Signed)

"CHARLES FRANCIS ADAMS."

On the 22nd June, 1863, the cause came on for trial in the Court of Exchequer before the Lord Chief Baron (the Chief Judge of that Court) and a Special Jury; the Attorney-General, the Solicitor-General, and the Queen's Advocate, with two other members of the Bar, conducting the case for the Crown. The trial occupied three days. At the close of the third day the jury returned a verdict against the Crown and in favour of the persons claiming to be owners of the ship.¶ Application was thereupon made on behalf of the Crown to the four judges of the Court of Exchequer sitting as a collective Court, to obtain a new trial of the cause, on the grounds, first, that the instructions which had been delivered by the Lord Chief Baron to the jury as to the intent and interpretation of the law were erroneous; and, secondly, that the verdict was contrary to the weight of

* Appendix, vol. ii, p. 222.

† Ibid., p. 227.

‡ Ibid., p. 229.

§ Ibid., p. 232.

|| Ibid., p. 231.

¶ Appendix, vol. iii, p. 56.

testimony. After long argument, the hearing being continued during six days, this application failed, the four Judges composing the Court being equally divided in opinion, and judgment was given against the Crown.* All the Judges pronounced their opinions *separatim* in open Court. From this judgment an appeal was made on behalf of the Crown to another tribunal (the Exchequer Chamber) composed of all the Judges of the Superior Courts of Common Law sitting collectively; but it was adjudged, after argument, that the jurisdiction assigned by law to this tribunal did not authorize it to entertain the appeal.

Costs and damages amounting to 3,700*l.* were paid by the Crown, as the defeated party, to the claimants of the ship.

Whilst these proceedings were pending, and after the verdict of the jury had been delivered, Mr. Seward addressed to Mr. Adams a despatch, dated the 11th July, 1863, which contained the following instructions in regard to the case of the *Alexandra*:—

"1st. You are authorized and expected to assure Earl Russell that this Government is entirely satisfied that Her Majesty's Government have conducted the proceedings in that case with perfect good faith and honour, and that they are well disposed to prevent the fitting out of armed vessels in British ports to depredate upon American commerce and to make war against the United States.

"2ndly. This Government is satisfied that the Law Officers of the Crown have performed their duties in regard to the case of the *Alexandra* with a sincere conviction of the adequacy of the law of Great Britain, and a sincere desire to give it effect.

"3rdly. The Government of the United States does not descend to inquire whether the jury in the case were or were not impartial. It willingly believes they were so, and it accepts the statement made with so much unanimity by all the reporters of the case, that the judge who presided at the trial made the bench responsible for the verdict by the boldness and directness of his rulings against the prosecution.

"4thly. Great Britain being a free and constitutional country, and the proceedings in the case of the *Alexandra* having been thus far conducted by the Government in good faith and according to law, the United States would not be justified in deeming the verdict rendered by the jury a cause of national complaint, provided that the Government prosecutes an appeal to the higher Courts until it be determined in the Court of last resort whether the law is adequate to the maintenance of the neutrality which Her Majesty has proclaimed, and provided also that in the meantime the *Alexandra* and other vessels that may be found violating or preparing to violate the law be prevented, so far as the law may allow, from leaving British ports to prosecute their work of devastation."

During the whole course of these proceedings, viz., from the 5th April, 1863, to the 24th April, 1864, the *Alexandra* remained under seizure and in the possession of the officers of Customs.

At the end of that time, the Executive having no legal power to detain her, she came again into the possession of Messrs. Fawcett, Preston, and Co., the persons claiming to be her owners, by whom she was, in June 1864, sold to a Mr. Henry Lafone, a merchant residing at Liverpool. By her new owner her name was then changed to "the *Mary*," her fittings on deck and below were altered and made apparently suitable to a vessel of commerce; and in July 1864 she sailed from Liverpool for Bermuda and thence to Halifax. Mr. Seward, on being informed of her arrival there, wrote as follows to Mr. Hume Burnley, Her Britannic Majesty's Chargé d'Affaires at Washington:—†

Mr. Seward to Mr. Burnley.

"Sir,
"This Department has been informed that the steamer *Mary*, which formerly, under the name of the *Alexandra*, was charged in the British Courts with having been built for the naval service of the insurgents, has arrived at Halifax for the supposed purpose of there being armed and equipped for that service.

"It is consequently suggested that you communicate with the Governor of Nova Scotia, in order that the hostile designs of that vessel against the United States and their shipping may not be carried into effect from any port within his jurisdiction.

"I have, &c.
(Signed) *WILLIAM H. SEWARD.*"

A copy of this Note was at once transmitted by Mr. Burnley to the Lieutenant-Governor of Nova Scotia, who replied as follows:—

Lieutenant-Governor Macdonnell to Mr. Burnley.

"Sir,
"Government House, Halifax, Nova Scotia, September 30, 1864.
"I have the honour to acknowledge the receipt of yours of the 13th instant, which did not reach me till the 28th instant. Your letter incloses a communication from Mr. Seward, representing that

* Appendix, vol. iii, p. 57.

† *Ibid.*, vol. ii, p. 272.

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the Mary, formerly the Alexandra, has arrived at Halifax for the supposed purpose of being armed and equipped for the Confederate Service.

" Mr. Seward therefore suggests that you should communicate with me, in order that the hostile designs of that vessel against the United States and their shipping may not be carried into effect from any port within my jurisdiction.

" In reply, I have to state that, in future, as heretofore, my most strenuous exertions shall be directed to maintaining within the neutral waters of this portion of Her Majesty's dominions the strictest observance of those orders which have been issued for my guidance in reference to belligerent cruisers, whether Federal or Confederate.

" I cannot, however, interfere with any vessel British owned, in a British harbour, on mere suspicion; nevertheless I have so decided a determination to prevent any abuse of the accommodation afforded by this port to any party, that I have instituted inquiry, for my own satisfaction, into the rumoured destination of the Mary. I have even directed that the Mary shall be watched, and am prepared to interfere, if any illegal equipment of that vessel, for warlike purposes, be attempted in this province.

" At the same time you may inform Mr. Seward that the result of my inquiries hitherto leads me to suppose that the Mary, although originally strongly built, and apparently intended for warlike purposes, is now lying here an embarrassment to her owners, unsaleable and unserviceable, either as an ordinary merchantman or a cruiser. Her speed under steam does not exceed four and a half knots, and I believe she is considered a failure, whatever may have been her original destination. Therefore no difficulty is likely to arise in her case.

" I have, &c.

(Signed) " R. G. MACDONNELL, Lieutenant-Governor, &c."

The Mary returned in November from Halifax to Bermuda, and thence proceeded to Nassau, where, on the 13th December, 1864, she was seized by order of the Governor, and proceedings were instituted against her in the Vice-Admiralty Court of the Colony,⁴ it having been discovered that she had taken on board at Bermuda certain packages the contents of which afforded some evidence that a design existed of employing her in the naval service of the Confederate States. The cause was heard on the 22nd and 23rd May, 1865, and on the 30th May the Court decided that there was no "reasonably sufficient" evidence of illegal intent to support a sentence of forfeiture, and the vessel was accordingly released.⁵ The war had by that time terminated, and all armed resistance to the authority of the Government of the United States was at an end. The costs and expenses which the Colonial Government incurred by the seizure of the vessel amounted to \$111. 18s.

El Tousson and El Moassir (Iron-clad Rams).

On the 7th July, 1863, Mr. Dudley made formal application to the Collector of Customs at Liverpool to seize, under the provisions of the above-mentioned Act, a vessel described by him (Mr. Dudley) as "an iron-clad steam-vessel of war," launched three days before and then lying at Birkenhead.⁶ He at the same time laid before the Collector several depositions on oath, sworn by himself and various other persons, in which it was stated that two iron-clad steam-ships, similar in all material respects to each other, had for many months been in process of construction in the shipbuilding yard of Messrs. Laird and Co., shipbuilders of Birkenhead; that they were of very great strength and manifestly designed for vessels of war; that each was furnished with a ram or piercer of wrought iron projecting under the water-line, and was also prepared to receive two iron turrets for heavy guns, and that two of such turrets were being constructed in the yard. One only of the said vessels had been launched, and to this Mr. Dudley's application related. The said depositions contained also allegations tending to show that the vessels were intended for the naval service of the Confederate States.

Copies of these depositions and of Mr. Dudley's application were, on the 11th July, 1863, sent by Mr. Adams to Earl Russell.⁷

On the 13th July these depositions were referred to the proper Departments of the Government, and to the Law Officers of the Crown.⁸

That these two vessels were in course of construction, had for a long time been known to Mr. Dudley, and he had sent information respecting them to the Government of the United States commencing in the month of July 1862. It was Mr. Dudley's opinion that they would be most formidable ships, possessing more power and speed than any iron-clads previously built, and so heavily plated as to be invulnerable.

Further depositions in support of the application were subsequently submitted by Mr. Dudley to the Collector of Customs, and transmitted by Mr. Adams to Earl Russell.⁹

The second of the two vessels above-mentioned was launched on the 29th August, 1863; and an application, supported by sworn depositions, for the seizure of her, was, on

* Appendix, vol. II, p. 268.
§ Ibid., p. 315.

† Ibid., p. 286.
|| Ibid., p. 323.

‡ Ibid., p. 317.
¶ Ibid., pp. 326, 333.

the 1st September, 1863, made by Mr. Dudley to the Collector of Customs at Liverpool. Copies of these further depositions were sent by Mr. Adams to Earl Russell.*

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Her Majesty's Government had, at the earliest moment, given directions that a strict watch should be kept over the vessels, and that diligent inquiry should be made for the purpose of ascertaining their character and destination.

It was at first reported that they were built for the Government of France. Subsequently, they were claimed by a M. Bravay, a French merchant and member of a firm carrying on business in Paris, who stated that he had purchased them on account of the Pasha of Egypt. M. Bravay had in fact, in August 1863, made an application to the French Government, stating the alleged purchase, and requesting that the good offices of the French Embassy in London might be used in his behalf, in order to enable him to send the vessels to Alexandria;† and it further appeared that he had, in February 1863, made a claim upon the Pasha's Government on account of two iron-clad vessels of war which he affirmed that he had been ordered to procure by the then Pasha's predecessor (who died in 1862), and for which he alleged that he had paid a large sum on account.‡ Finally, he produced to the British Naval Attaché at Paris a number of papers relating to the vessels, and furnished him with a copy of a legal instrument, dated 18th July, 1863, from which it appeared that the iron-clads had, in fact, been built to the order of Bullock, but that Bullock's interest in them had been transferred, or purported to be transferred, to Bravay.§

On the 28th August, 1863, Her Britannic Majesty's Consul-General in Egypt reported to the Government that the Pasha of Egypt refused to ratify the order alleged to have been given by his predecessor, or to purchase the vessels. This Report was received by the Government on the 5th September.||

On the same 5th September the builders of the vessels, in reply to an inquiry addressed to them by the Under-Secretary of State for Foreign Affairs, wrote to him as follows:—||

Messrs. Laird Brothers to Her Majesty's Foreign Office.

“Sir, “*Birkenhead, September 5, 1863.*

“We have received your letter of the 4th instant, stating that Lord Russell has instructed you to request us to inform him, with as little delay as possible, on whose account and with what destination we have built the iron-clad vessels recently launched and now in course of completion at our works.

“In reply, we beg to say, that although it is not usual for shipbuilders to declare the names of parties for whom they are building vessels until the vessels are completed and the owners have taken possession, yet in this particular case, in consequence of the many rumours afloat, coupled with the repeated visits of Mr. Morgan, the Surveyor of Customs, to our works, we thought it right to ask permission of the parties on whose account we are building the vessels to give their names to the English Government, in the event of such information being asked for officially in writing.

“They at once granted us the permission we sought for.

“We therefore beg to inform you that the firm on whose account we are building the vessels is A. Bravay and Co., and that their address is No. 6, Rue de Londres, Paris, and that our engagement is to deliver the vessels to them in the port of Liverpool when they are completed according to our contract.

“The time in which we expect to have the first vessel so completed is not less than one month from this date, and the second not less than six or seven weeks from this date.

“We are, &c.

(Signed) “*LAIRD BROTHERS.*

“A. H. Layard, Esq., M.P.”

The inquiries directed by Her Majesty's Government were actively prosecuted, and, although they led to no conclusive result, nevertheless convinced the Government that there was a reasonable prospect of obtaining sufficient evidence as to the destination of the vessels. On the 9th September, 1863, both vessels being then in an unfinished state, the following notice was sent to the builders by the Secretary of the Treasury:—

Her Majesty's Treasury to Messrs. Laird Brothers.

“Gentlemen,

“*Treasury Chambers, September 9, 1863.*

“I am desired by my Lords Commissioners of Her Majesty's Treasury to acquaint you that their Lordships have felt it their duty to issue orders to the Commissioners of Customs that the two iron-clad steamers now in the course of completion in your dock at Birkenhead are not to be permitted to leave the Mersey until satisfactory evidence can be given of their destination, or at least until the inquiries which are now being prosecuted with a view to obtain such evidence shall have been brought to a conclusion.

“I am, &c.

(Signed) “*GEORGE A. HAMILTON.*

“*Messrs. Laird and Co., Birkenhead.*”

* Appendix, vol. ii, pp. 345, 349.

§ Ibid., p. 372.

† Ibid., p. 359.

|| Ibid., p. 363.

‡ Ibid., p. 315.

¶ Ibid., p. 355.

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The builders replied as follows:—*

“ In reply, we beg to inform you that we have forwarded a copy of your letter to Messrs. A. Savary and Co., at No. 6, Rue de Louvres, Paris, on whose account we are building the vessels, and to whom we beg to refer you for further information; inasmuch as our engagement with them is to deliver the vessels at the port of Liverpool when they are completed according to our contract.”

The builders having informed the Collector of Customs that they wished to take the vessel which was nearest completion (named *El Tousson*) for a trial trip, in order to test the machinery, but with an assurance that she should be brought back again, they were told that circumstances had come to the knowledge of the Government which gave rise to an apprehension that an attempt might be made, without the privity and against the intention of the builders themselves, to carry away the vessel by force while on such trial-trip.† The Government, therefore, could not permit the trip to take place, unless on the condition that a force of seamen and marines, from Her Majesty’s Channel Fleet (which was then in the Mersey), sufficient to defeat any such attempt, should be placed on board of the vessel.

On the 7th October, 1863, the builders were told that, in consequence of further information received by the Government, it was deemed necessary to place an officer of the Customs on board the vessel named *El Tousson*, with authority to seize her on behalf of the Crown in the event of any attempt being made to remove her from her actual position, and that he was instructed to obtain from the Commanding Officer of Her Majesty’s ship of war *Majestic* any protection which might be necessary to support him in the execution of his duty.‡

On the 9th October, 1863, orders were issued to seize both the vessels, and they were seized accordingly.§ The vessels remained under seizure from that time until the month of May, 1864, when they were, by agreement, sold and transferred to Her Majesty’s Government for the aggregate sum of 220,000*l.*|| The evidence which the Government had up to that time been able to obtain, was so imperfect as to make the event of a trial doubtful; and in agreeing to the purchase, Her Majesty’s Government was mainly actuated by a desire to prevent by any means within its power (however costly) vessels of so formidable a character, constructed in a British port, from passing directly or indirectly into the hands of a belligerent.

The Canton or Pampero.

On the 18th October, 1863, Earl Russell received from Mr. Adams the following Note (with an inclosure):—¶

Mr. Adams to Earl Russell.

“ My Lord,

“ It is with great regret that I find it my duty once more to call your Lordship’s attention to the efforts making in this kingdom to aid the insurgents in America in carrying on their resistance to the Government of the United States. I have strong reason for believing that, in addition to a very formidable steam ram now in process of construction at the port of Glasgow, but not yet so far advanced as fully to develop her character, there is another steamer ready to be launched, called the *Canton*, having all the characteristics of a war-vessel, which is about to be fitted up and dispatched with the same intent from the same place. I beg leave to submit to your Lordship’s consideration some extracts from a letter addressed to me by W. L. Underwood, Esq., the Consul of the United States, giving some information in regard to this case. Mr. Underwood himself entertains no doubt of the destination of this vessel, although from the secrecy used in the process of construction and preparation, itself a cause of suspicion, he has been slow in gaining evidence on which to base a representation.

“ Not doubting that Her Majesty’s Government will take all suitable measures to ascertain the correctness of these allegations, I pray, &c.

(Signed) “ CHARLES FRANCIS ADAMS.”

The extracts inclosed in the above note contained a description of the *Canton*.

The information thus furnished by Mr. Adams was immediately communicated to the proper Departments of the Government, and the officers of Customs and local authorities were instructed to make immediate inquiry, and to take such legal measures as might prevent any attempt to infringe the law.

The inquiries thus directed were pursued for a considerable time with very little result. The vessel was carefully examined, both by the Surveyor of the Customs, and by the commanding officer of Her Majesty’s ship *Hogue*, stationed in the Clyde; and the specifi-

* Appendix, vol. ii, p. 358. † Ibid., p. 367. ‡ Ibid., p. 387. § Ibid., pp. 388, 389, et seq.
|| Ibid., pp. 457-459. ¶ Ibid., p. 467.

cations on which she was constructed, as well as the contract for building her, were produced and exhibited by the agents through whom the contract had been made. It appeared that, though she was being fitted up as a passenger ship, there were some peculiarities in her construction such as to render her capable of being converted, not indeed into a regular ship of war, but into a vessel serviceable for war purposes. She had been contracted for by a person resident in London, through the agency of a Glasgow firm; and this firm, as well as her builders, stated that they believed her to be intended for the merchant service, and were not aware of any intention to dispose of her to the Confederate States.

The vessel was launched on the 29th October, 1863 (her name having been previously changed to "the Pampero");* and the United States' Consul at Glasgow soon afterwards made a formal application that she might be seized, supporting it by several depositions on oath, to which others were afterwards added from time to time.† No evidence whatever of her being intended for the Confederate Service, beyond vague rumour and bearsay, was furnished by the United States' Consul in these depositions or otherwise, nor by Mr. Adams.

By the end of November, however, the inquiries directed by the Government had led to the production of some evidence, and it was eventually ascertained that the real owners of the vessel were several persons resident respectively in London, Manchester, Glasgow, and Dumbarton, and that they were under a contract to sell her to one Sinclair, calling himself a citizen of the Confederate States; but that Sinclair had lately been, and then was, desirous of cancelling the contract. A letter from Sinclair asking that the contract might be cancelled, was placed in the hands of the Law Officers of the Crown for Scotland, and was as follows:—‡

"My dear Sir,

"London, September 24, 1863.

"When I made a contract with you in November last for the building of a steam ship, I was under the impression, having taken legal advice, that there was nothing in the law of England that would prevent a British subject from building such a vessel for any foreign subject as a commercial transaction. Although the recent decision of the Court of Exchequer in the case of the Alexandra would seem to sustain the opinion, yet the evident determination of your Government to yield to the pressure of the United States' Minister, and prevent the sailing of any vessel that may be suspected of being the property of a citizen of the Confederate States, is made so manifest that I have concluded it will be better for me to endeavour to close that contract referred to, and go where I can have more liberal action.

"In these circumstances I desire to put an end to our transaction, by your returning me the cotton certificates which I delivered to account of price, and my cancelling the contract.

"The increased value of shipping since the date of our transaction will, I have no doubt, enable you at once to meet my wishes in this respect. I shall feel much obliged by an early reply.

(Signed) "G. SINCLAIR.

"Edward Pembroke, Esq."

On the 10th December the Pampero was, by direction of Her Majesty's Government, seized by the Collector of Customs at Glasgow, and legal proceedings were instituted to obtain a declaration of forfeiture.§ The case was appointed to be tried in April 1864; when, no defence being made, a verdict was entered for the Crown, and the vessel was declared forfeited. She remained under seizure until October 1865, and was then given up to her owners, all reasons for detaining her being at an end.||

The Amphon, the Hawk, the Virginia, the Louisa Ann Fanny, the Hercules.

In the year 1864 representations were made by Mr. Adams to Earl Russell respecting two vessels named the Amphon and Hawk; and, in the year 1865, respecting three others, the Virginia, the Louisa Ann Fanny, and the Hercules, all of which he alleged to be fitting out in ports of the United Kingdom under suspicious circumstances, and to be probably destined for the naval service of the Confederate States. In each of these cases the information furnished was immediately transmitted to the proper Departments of the Government, and careful inquiry was made. In none of them were any reasonable grounds of suspicion found on examination to exist, which would have justified the Executive in interfering, and none of the suspected vessels were ever in fact armed or used for purposes of war. The dates at which Mr. Adams' representations in these several cases were respectively first received, and were referred for inquiry, were as follows:—

The Amphon.—Received March 18, 1864; referred on the same day to the Home Department.¶

* Appendix, vol. ii, p. 478.

† Ibid., p. 486.

‡ Ibid., p. 511.

§ Ibid., p. 525.

|| Ibid., p. 533.

¶ Ibid., pp. 566, 567.

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The Hawk.—Received April 16, 1864; referred to the Treasury, the Home Department, and the Lord Advocate (the Law Officer of the Crown for Scotland), April 18, 1864.*

The Virginia and Louisa Ann Fanny.—Received January 30, 1865; referred to the Treasury, February 1, 1865.†

The Hercules.—Received February 7, 1865; referred to the Treasury and to the Home Department, February 8 and 9, 1865.‡

In acknowledging the receipt of Mr. Adams' Note respecting the Hercules, Earl Russell wrote as follows:—§.

Earl Russell to Mr. Adams.

"Sir,

"Foreign Office, February 8, 1865.

"I have received your letter dated the 7th instant, and delivered at the Foreign Office at a late hour yesterday evening after the close of business; but not being marked immediate, it did not come under the notice of the Under-Secretary of State until 1 P.M. to-day.

"The matter shall be immediately attended to, but, in the meantime, I wish to call your attention to the dates of the letters which you inclose. The first letter of the United States' Consul, at Liverpool, is dated the 2nd instant, and affirms that a steamer named the Hercules is fitting out in the Clyde for the Confederate service, and that this vessel is to be ready for sea in eight days. The second letter which you transmit to me is dated Glasgow, the 4th instant, and contains further information respecting this vessel, and states, moreover, that the trial trip is to take place to-day.

"In a former instance I was able by means of the Lord Advocate to prosecute the owners of a vessel building in the Clyde, and to get a verdict entered by consent which defeated the purpose of the Confederate agent. But these operations are very quick, and unless I have timely notice I can have but little hope of stopping these nefarious transactions.

"I have, &c.

(Signed) "RUSSELL."

The attention of the Government had been directed to the Amphion and Hawk, and inquiry made respecting them, before the receipt of any representation from Mr. Adams concerning those vessels. A vessel called the Ajax, as to which no representation had been made or information furnished, but which was suspected by some of her crew of being intended for the Confederate service, was examined and searched by the officers of Customs at Queenstown, and afterwards, under instructions from the Government, by the Colonial authorities at Nassau.|| She was not, however, found to be adapted or intended for warlike use, and was never applied to such use.

In sending information to Mr. Adams respecting the Virginia, Mr. Dudley, in a letter dated the 27th January, 1865, wrote as follows:—¶

"Like the Sea King, any steamer now destined for privateering fits away as a commercial vessel, and there is nothing about her movement before she leaves port, or until within a few hours of her leaving, when she may suddenly change owners, and her master be given authority to sell at a given sum out of British waters, to create any mistrust of the purpose of those who control her here.

"Under such a mode of operations it is next to impossible for us to get testimony in season, and sufficiently strong, to ask for their detention. The only course left me, therefore, is to call your attention to all cases offering any reasonable ground of suspicion, and leave them to be disposed of as you may deem most expedient."

Summary.

The preceding statement of facts shows the general course of conduct pursued by Her Britannic Majesty's Government, in relation to vessels alleged to be, or suspected of being, fitted out or prepared within British territory for belligerent use. It includes all the cases (except those of the Florida and Alabama, which will be presently stated), in which information that any vessel was being built, equipped, or prepared for sea in any British port, and intended, or supposed to be intended, for warlike use, was received by, or came to the knowledge of, Her Majesty's Government before the departure of such vessel.

It will have been seen—

1. That in every case directions were given, without the least delay, for investigation and inquiry on the spot by the proper officers of Government; and these officers were ordered to keep a watchful eye on the suspected vessel; and the directions and orders so given were executed.

2. That in some cases the attention of the Government had been directed, before the

* Appendix, vol. II, pp. 543, 544.
§ Ibid., p. 582.

† Ibid., pp. 595, 596.
|| Ibid., pp. 575, 580.

‡ Ibid., p. 580.
¶ Ibid., p. 596.

receipt of any communication from Mr. Adams, to vessels as to which there appeared to be ground for suspicion.

3. That as soon as any evidence was obtained it was submitted, without delay, to the Law Officers of the Crown; and they were called upon to advise as to the proper course of proceeding.

4. That in every case in which reasonable evidence could be obtained the vessel was seized by the officers of the Government, and proceedings were instituted against her in the proper Court of law. By reasonable evidence is understood testimony which, though not conclusive, offered nevertheless a reasonable prospect that the Government might be able, when the time for trying the case should arrive, to sustain the seizure in a Court of law.

5. That in several of the cases in which a seizure was made the Government found itself unable, or uncertain whether it would be able, to sustain the seizure by sufficient evidence, and was under the necessity of either releasing the vessel and paying the costs of the trial and detention, or of purchasing her at the public expense.

6. That in every one of the cases enumerated either the information furnished to the Government proved to be erroneous, and the supposed indicia of an unlawful intention to be absent or deceptive, or this intention was defeated or abandoned by reason of the measures taken and the vigilance exercised by Her Majesty's Government.

7. That it is easy to infer special adaptation for war from peculiarities or supposed peculiarities of construction which are really equivocal; and such inferences are liable to be fallacious, especially in cases where the vessel is constructed with a view to some employment which, though commercial, is out of the ordinary course of commerce.

Case of the Anglo-Chinese Flotilla.

The steady determination of Her Britannic Majesty's Government to guard against any act or occurrence which might be supposed to cast a doubt on its neutrality, and its readiness even to go beyond, for this purpose, the strict measure of its international obligations, were exemplified in the case of the ironclad rams, and were even more strikingly shown in that of the flotilla of gunboats equipped for service in China.

In March 1862 the Chinese Government gave authority to Mr. Lay, Inspector-General of Chinese Customs, then on leave in England, to purchase and equip a steam-fleet for the Emperor's service;* and a sum of money was placed at his disposal for the purpose.

Mr. Lay accordingly entered into an agreement with Captain Sherard Osborn, an officer in Her Majesty's Navy, according to which the latter was to take command-in-chief of the fleet, receiving orders from the Chinese Government through Mr. Lay. Her Majesty's Government, by Orders in Council, gave permission to enlist officers and men for this service.

In September 1863 Captain Sherard Osborn arrived in China with the flotilla, consisting of six vessels of war. These were the Pekin, China, and Keang-soo of six guns each, the Kwangtung and Tien-tsin of four guns, and the Amoy of two, the Thule yacht, and the Ballarat storeship.

A difference, however, arose between the Chinese Government on the one side, and Mr. Lay and Captain Osborn on the other, as to the conditions on which Captain Osborn was to hold his command; and, this difference not having been adjusted, Captain Osborn informed Sir F. Bruce, Her Majesty's Minister at Pekin, that the force would be disbanded. He asked at the same time whether Sir F. Bruce saw any objection to his surrendering to the Chinese Government the eight ships which he had brought out.†

Sir F. Bruce thereupon informed the Chinese Government and Captain Osborn of his conviction that Her Majesty's Government would not have consented to the organisation of this powerful squadron, unless on the understanding that it was to be placed under the orders of an officer in whose prudence and high character they had full confidence, and that he could not consent to the ships and stores being handed over to the Chinese Government without instructions to that effect from Her Majesty's Government.†

Among other reasons for this course Sir F. Bruce reported to Her Majesty's Government that the ships were not such as the Chinese could manage, and that it would not be safe to sell them on the coast, as they might fall into the hands of hostile Daimios in Japan, or be bought for employment as Confederate cruisers in those seas.‡ The following letter from the United States' Minister at Pekin to Sir F. Bruce shows that he was equally alive to the latter danger:—

* Appendix, vol. ii, p. 681.

† Ibid., p. 682.

‡ Ibid., p. 686.

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statement.*"Mr. Burlingame to Sir F. Bruce."*

* Sir,

"When the Chinese Government refused the doings of its agent, Mr. Lay, and there was nothing left for Captain Osborn but to dissolve the force of the flotilla, the question was how it could be done with safety. I feared that the ships might fall into the hands of the Confederates, who are supposed to have agents in China; and then there was the common apprehension from lawless men on the coast in the interest of the Taepings as well as from pirates, and the desire of the Japanese in Japan to procure steamers at any price.

"It was clear that the Chinese could do nothing of themselves with the steamers, and that, unless something were done by you, they would certainly fall a prey to one of these several dangers. In my solicitude on account of the rebels in my own country, I made an earnest protest against the delivery of the ships to the Chinese. You responded in that spirit of comity which has ever distinguished our relations, that the ships should be taken back to England, and that no effort on your part should be spared to prevent them from taking a direction against the interests of my country.

"Though subsequent events made it necessary for the ships to take the direction indicated by the desire of the Chinese themselves, still I should be wanting in appreciation of your conduct did I not mark it with my most heartfelt thanks, and at as early a period as possible bring it to the attention of my Government.

"I have, &c.
(Signed) "A. BURLINGAME"

It was eventually arranged that Captain Osborn should send part of the flotilla to England, take the other portion to Bombay, and sell them all on account of the Chinese Government.

Captain Osborn accordingly took three vessels, the Keangsoo (6 guns), Kwangtung (4 guns), and Amoy (2 guns), and the despatch-boat Thule, to Bombay, where he arrived in January 1864.† At his request the Government of India took charge of the vessels and the military stores on board of them, and he then proceeded to England, where he arrived in February. The rest of the flotilla, consisting of the Pekin and China (6 guns), the Tien-tsin (4 guns), and the Ballarat store-ship, were sent to England, where they arrived in April.‡

On the first intelligence of the arrangement made with the Chinese Government for disposing of these vessels in India and England, a letter was addressed by the Foreign Office to the Admiralty, India Office, and Colonial Office,§ stating that the "vessels are understood to be fully equipped for belligerent purposes, and Her Majesty's Government are of opinion that it is incumbent upon them to take any precaution that may legally be within their power to prevent them from passing in their present state into the hands of any Power or State engaged in hostility with another Power or State in affinity with Her Majesty."

It was therefore desired "that the attention of the Naval, Colonial, or Indian authorities, both at home and on any station abroad within Her Majesty's dominions, where the vessels may be expected to be met with, should be called to the necessity of taking such measures as may be legally within their power in furtherance of the views of Her Majesty's Government in this matter; and specifically as regards Captain Osborn, who is an officer in Her Majesty's naval service, that he should be pointedly cautioned against disposing of any of the vessels to be used in the naval service of a belligerent Power."

Sir F. Bruce, at Pekin, and Sir H. Parkes, at Shanghai, were instructed to make a similar communication to Captain Osborn, in case that officer was still in China when the despatch reached them.

In anticipation of these instructions Commodore Montresor had warned Captain Osborn on his arrival at Bombay against selling the vessels, and had joined with the Governor in remonstrating against any attempt to sell the Thule, which, as being an unarmed despatch-boat, did not, in Captain Osborn's opinion, come within the same category as the armed vessels, but which the two former officers considered open to objection, as having been equipped for naval service, and capable of being adapted in some degree to belligerent purposes.||

The Thule was, notwithstanding, advertised for sale in Bombay on the 16th February, after Captain Osborn's departure; but the Government of Bombay forbade the sale. Orders were sent from home in April to permit the sale of the Thule, but to retain the other vessels. Care was also to be taken that the Thule was not equipped as a vessel of war for either of the belligerent parties in America.¶

The sale, however, did not take place.

* Appendix, vol. II, p. 689.
† Ibid., p. 684.

‡ Ibid., p. 692.
§ Ibid., p. 695.

¶ Ibid., p. 700.
|| Ibid., pp. 700, 703.

The three armed vessels sent to England arrived in April, and were moored in Woolwich Dockyard. The Ballarat, being merely a store-ship, did not come under the custody of the Government, and was sold.

The Admiralty refused to purchase the vessels for the Government; and it was settled that they should be placed at moorings in the Medway, and there retained until the objections to their sale might be removed, and that any expenses incurred by this course should be defrayed by Her Majesty's Government.*

In the meanwhile Captain Osborn, learning that it was not the intention of the Government to purchase the vessels left in charge of the Bombay authorities, wrote to ask permission to relieve himself of all responsibility, by substituting a mercantile firm at Bombay as the agents to carry out Sir Frederick Bruce's instructions for the sale of the vessels on account of the Chinese Government.*

The matter was referred to the Law Officers, who reported that the sale within Her Majesty's Dominions, even to a belligerent Power, of armed ships of war, already legally equipped with a view to a different object under Her Majesty's license, would not be illegal. The Foreign Enlistment Act, did not, in their opinion, prohibit such a sale. Her Majesty's Government had therefore two alternatives. It might, on the one hand, inform Captain Osborn that it did not interpose any objection to his selling the vessels to any person or in any way that he might think fit; such sale (provided no addition were made to their equipments or furniture, before delivery to the purchaser, for the purposes of any belligerent Power) being in no way contrary to law. If, on the other hand, the Government were not prepared to take this course, it was morally bound to take upon itself the responsibility from which Captain Osborn desired to be freed.

Captain Oshorn, the Admiralty, and India Office were thereupon apprized that Her Majesty's Government could not at present sanction the sale of the vessels in India, but was prepared to take on itself the responsibility of detaining the vessels in question unsold until further orders. A similar communication was made to the Chinese Government, through Sir F. Bruce, with the assurance that the Chinese Government should not ultimately lose the value of the vessels †.

An offer was made in December, 1864, by Messrs. Rutherford and Thompson, to purchase the three vessels in England on behalf of a foreign Government.‡ They were informed that a written guarantee would be required from the Representative of the Power for whom the vessels might be purchased, that they would not be used for warlike purposes against any Power with whom the Queen was at peace, and that the Government reserved to itself the right of refusing, without giving any reason, to sell the vessels when the name of the principal in the transaction should be disclosed. The negotiation was dropped. Overtures were also made in 1865 by Messrs. Bage and Co. to buy the vessels for the Government of Mexico, but these also failed.

A Committee appointed to assess the value of the vessels at the time they left China valued them, with the concurrence of Captain Osborn, at 152,500*l.*, and Mr. Wade was instructed to inform the Chinese Government that the Admiralty would be intrusted with the sale of them, that the amount realized would be transmitted to the Chinese Government, and any loss upon the original value of the ships would be made good by Her Majesty's Government. The Admiralty was at the same time again cautioned against the sale of the vessels either directly or indirectly to any State or body of persons at war with a State in amity with Her Majesty.§

In June, 1865, the Civil War in America having come to an end, the restrictions on the sale of the vessels were withdrawn; but, from the delay and consequent deterioration, the price realized fell far short of the original estimate.

The Government of Egypt purchased the three vessels in England for 30,100*l.* Of the four vessels left at Bombay, the Government of India purchased two for 14,500*l.*, from which however a sum of 6,376*l.* had to be deducted for dockyard expenses. A sum of 11,250*l.* was realized by the sale of the two remaining vessels; and the balance of 103,026*l.* was provided by a Parliamentary grant, and paid over to the Chinese Government.||

The guns and munitions of war on board the vessels had been procured from Her Majesty's Government, and they were taken back by the Military authorities in England and India, and the amount remitted to the Chinese Government.

Sir Frederick Bruce, writing in December, 1865, from Washington, to urge a speedy settlement of the Chinese claim, said, "I may mention that there is no doubt that agents

* Appendix, vol. II, p. 701.

† Ibid., p. 104.

‡ Ibid., p. 710.

§ Ibid., pp. 712-714.

|| Ibid., p. 721.

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of the Confederates were on the look-out to purchase the more powerful vessels of the squadron from the Chinese, had they been left in their hands, and it is equally certain that the Chinese would have sold these vessels as being unsuited to them. It is not difficult to conjecture what would have been the effect on our relations with this Government had any of these vessels been turned into Confederate cruisers. It would have been impossible to disabuse this Government and people of the idea that the flotilla was a deep-laid scheme to supply the Confederates with an efficient squadron in the Pacific.*

And Mr. Adams, in a note to Lord Clarendon of December 28, 1865, on the same subject, wrote as follows :†—"In a conversation which I had the honour to hold with your predecessor, the Right Honourable Earl Russell, on the 25th of February, 1864, I acquitted myself of what was to me a most agreeable duty, of signifying to Her Majesty's Government the high sense entertained by that which I have the honour to represent, of the friendly proceedings of Her Majesty's Envoy in China, Sir Frederick Bruce, in regard to the disposition to be made of the vessels then known as the Oshorn Flotilla."

* Appendix, vol. II, p. 718.

† Ibid., p. 719.

PART IV.

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statement.

Considerations proper to be kept in view by the Arbitrators in reference to the Cases of the Florida, Alabama, Georgia, and Shenandoah.

In considering the facts about to be presented to the Tribunal relative to the four vessels which, after having been originally procured from British ports, were employed as Confederate cruisers in the war, it is right that the Arbitrators should bear in mind the following propositions, to some of which their attention has already been directed in an earlier part of this Case:—

1. The powers possessed by Her Majesty's Government to prohibit or prevent the fitting out, arming, or equipping within its jurisdiction of vessels intended for the naval service of the Confederate States, or the departure with that intent of vessels specially adapted within its jurisdiction to warlike use, were powers defined and regulated by the Statute or Act of Parliament of July 3, 1819 (the Foreign Enlistment Act).

2. The modes of prevention provided by the Statute were two, of which both or either might be adopted as might be deemed most expedient, namely, (1), the prosecution of the offender by information or indictment; (2), the seizure of the ship, which, after seizure, might be prosecuted and condemned in the same manner as for a breach of the Customs or Excise laws, or of the laws of trade and navigation.

3. The persons empowered to seize under the provisions of the Statute were any officers of Customs or Excise or of Her Majesty's Navy who by law were empowered to make seizures for forfeitures incurred under the laws of Customs or Excise, or of trade or navigation; and the seizure was to be made in the same manner as seizures are made under those laws.

4. The Customs officers were not empowered by law to make a seizure until an information on oath should have been laid before them. Nor, without such an information on oath, had any Magistrate jurisdiction under the provisions of the Statute.

5. After a seizure made, it was by law necessary that proceedings for the condemnation of the vessel seized should be instituted in the Court of Exchequer and brought to trial before a jury. In order to obtain a condemnation it was necessary to prove two things,—

(a.) That there had been in fact an equipping, furnishing, fitting-out, or arming of the vessel, or an attempt or endeavour so to do, or an issuing or delivery of a commission for the vessel, within the dominions of the Crown;

(b.) That the act had been done with intent, or in order, that the vessel should be employed in belligerent operations as described in the 7th Section of the Statute.

6. By proof, in a British Court of law, is understood the production of evidence sufficient to create in the mind of the Judge or jury (as the case may be), a reasonable and deliberate belief, such as a reasonable person would be satisfied to act upon in any important concerns of his own, of the truth of the fact to be proved. And by evidence is understood the testimony, on oath, of a witness or witnesses produced in open Court, and subject to cross-examination, as to facts within his or their personal knowledge. Testimony which is mere hearsay, or as to the existence of common reports, however prevalent and however generally credited, or as to any matter not within the knowledge of the witness, is not admitted in an English Court.

7. In the judgment of Her Britannic Majesty's Government, and in that of its official advisers, the special adaptation of a vessel to warlike use was among the acts prohibited by the Statute, provided there were sufficient proof of an unlawful intent, although the vessel might not be actually armed so as to be capable of immediate employment for war. But no Court of law had pronounced a decision on this point, and the question was never raised before any such Court until the trial of the case of the *Alexandra* in 1863.

Her Britannic Majesty's Government now proceeds to state for the information of the Tribunal the facts relative to the cases of the Florida and Alabama. It may be the

Part IV.

Introductory
statement.

remarked that, when these cases were brought to the notice of Her Majesty's Government and up to the time of the departure of the Alabama from Liverpool, there had been no instance, from the commencement of the war, of a vessel ascertained to have been fitted out in, or despatched from, any British port for the purpose of engaging in hostilities against the United States. The only vessel to which the attention of Her Majesty's Government had been directed before the Florida had proved to be a blockade-runner.

It may be added that the claims for the interference of Her Majesty's Government in the case of these and other vessels were based, according to the statement of Mr. Adams in his letter to Earl Russell, dated 9th October, 1862, on evidence considered by him to "apply directly to infringements of the Municipal Law, and not to anything beyond it."^{*}

* Appendix, vol. i, p. 216.

PART V.

Part V.

The Florida.

Statement of Facts relative to the Florida.

On the 19th February, 1862, Earl Russell received from Mr. Adams the following Note and inclosure:—

Mr. Adams to Earl Russell.

" My Lord,

" I have the honour to submit to your consideration the copy of an extract of a letter addressed to me by the Consul of the United States at Liverpool, going to show the preparation at that port of an armed steamer evidently intended for hostile operations on the ocean. From the evidence furnished in the names of the persons stated to be concerned in her construction and outfit, I entertain little doubt that the intention is precisely that indicated in the letter of the Consul, the carrying on war against the United States. The parties are the same which dispatched the *Bermuda*, laden with contraband of war at the time, in August last, when I had the honour of calling your Lordship's attention to her position, which vessel then succeeded in running the blockade, and which now appears to be about again to depart on a like errand.

" Should further evidence to sustain the allegations respecting the *Oreto* be held necessary to effect the object of securing the interposition of Her Majesty's Government, I will make an effort to procure it in a more formal manner.

" I have, &c.

(Signed) " CHARLES FRANCIS ADAMS."

(Inclosure.)

Mr. Dudley to Mr. Adams.

" Sir,

" The gun-boat *Oreto* is still at this port. She is making a trial trip in the river, to-day. No armament as yet on board. She has put up a second smoke-stack since I wrote you. She therefore has two funnels, three masts, and is barque-rigged. I am now informed that she is to carry eight rifled cannon, and two long swivel-guns on pivots so arranged as to rake both fore and aft. No pains or expense has been spared in her construction, and when fully armed, she will be a formidable and dangerous craft. In strength and armament quite equal to the *Tuscarors*, so I should judge from what I learn.

" Mr. Miller, who built the hull, says he was employed by Fawcett, Preston, and Co., and that they own the vessel. I have obtained information from many different sources, all of which goes to show that she is intended for the Southern Confederacy. I am satisfied that this is the case. She is ready to take her arms on board. I cannot learn whether they are to be shipped here or at some other port. Of course she is intended as a privateer. When she sails, it will be to burn and destroy whatever she meets with bearing the American flag.

" The *Herald* sailed for Charleston on Saturday last; Captain Coxeter went out in her. The *Bermuda* will sail this week.

" I have, &c.

(Signed) " H. DUDLEY, *United States' Consul.*"

" P.S.—The gun carriages for the *Oreto*, I have just learned, were taken on board on Friday night last, in a rough state, and taken down in the hold. Fraser, Trenholm, and Co. have made advances to Fawcett, Preston, and Co., and Miller, the builder.

" H. D."

A fortnight before the date of Mr. Adams' letter, Mr. Dudley, in writing to Mr. Seward, had mentioned the *Oreto*. He then said, " In my last two despatches I called attention to the iron screw steam gun-boat *Oreto* or *Oretis*, being built at Liverpool and fitted out by Fawcett, Preston, and Co. She is now taking in her coal, and appearances indicate that she will leave here the latter part of this week without her armament. The probabilities are she will run into some small port, and take it and ammunition on board. This of itself is somewhat suspicious. They pretend she is built for the Italian Government, but the Italian Consul here informs me that he knows nothing about it, and has no knowledge whatever of any vessel being built for his Government. There is much secrecy observed about her, and I have been unable to get anything definite, but my impressions are strong that she is intended for the Southern Confederacy. I have communicated my impressions and all the facts to Mr. Adams, our Minister in London. She has one funnel,

three masts, bark-rigged, eight port-holes for guns on each side, and is to carry sixteen guns."

Mr. Adams had not previously to his Note of the 18th made any communication respecting this vessel to Her Majesty's Government.

Immediately on the receipt of Mr. Adams' Note and inclosure copies of both were sent to the Secretary to the Treasury, accompanied by the following letter signed by Mr. Hammond, one of the Under-Secretaries of State for Foreign Affairs:—*

"Sir,

"I am directed by Earl Russell to transmit to you a copy of a letter from Mr. Adams, inclosing an extract of a letter from the United States' Consul at Liverpool, in which he calls attention to a steam-vessel called the Oretto, reported to be fitting out at Liverpool as a Southern privateer; and I am to request that you will move the Lords Commissioners of Her Majesty's Treasury to cause immediate inquiries to be made respecting this vessel, and to take such steps in the matter as may be right and proper.

"I am, &c.

(Signed) "E. HAMMOND."

Earl Russell on the same day acknowledged the receipt of Mr. Adams' Note and inclosure, and stated (as the fact was) that he had lost no time in communicating with the proper Department of Government on the subject.

The Commissioners of Customs were instructed to inquire and report upon the matter; and, on the 24th February, 1862, the Secretary to the Treasury transmitted to Mr. Hammond their Report, which was as follows:—†

"Custom-house, February 22, 1862.

"Your Lordships having referred to us the annexed letter from Mr. Hammond, transmitting, by desire of Earl Russell, copy of a letter from Mr. Adams, inclosing an extract of a communication from the United States' Consul at Liverpool, in which he calls attention to a steam-vessel called the Oretto reported to be fitting out at Liverpool as a Southern privateer, and requesting that immediate inquiries may be made respecting this vessel,

"We report—

"That, on the receipt of your Lordships' reference, we forthwith instructed our Collector at Liverpool to make inquiries in regard to the vessel Oretto, and it appears from his Report that she has been built by Messrs. Miller and Sons for Messrs. Fawcett, Preston, and Co., Engineers, of Liverpool, and is intended for the use of Messrs. Thomas, Brothers, of Palermo, one of that firm having frequently visited the vessel during the process of building.

"The Oretto is pierced for four guns; but she has, as yet, taken nothing on board but coals and ballast. She is not, at present, fitted for the reception of guns, nor are the builders aware that she is to be supplied with guns whilst she remains in this country. The expense of her construction has been paid, and she has been handed over to Messrs. Fawcett and Preston. Messrs. Miller and Sons state their belief that her destination is Palermo, as they have been requested to recommend a master to take her to that port, and our Collector at Liverpool states that he has every reason to believe that the vessel is for the Italian Government.

"We beg further to add, that special directions have been given to the officers at Liverpool to watch the movements of the vessel, and that we will not fail to report forthwith any circumstance which may occur worthy of your Lordships' cognizance.

(Signed) "THO. F. FREMANTLE.
"GRENVILLE C. L. BERKELEY."

The Reports which the Commissioners of Customs had received from their officers at Liverpool were as follows:—‡

Mr. Edwards to the Commissioners of Customs.

"Honourable Sirs,

"Liverpool, February 21, 1862.

"The builders of the vessel Oretto are Messrs. Miller and Sons. Mr. Miller is the chief surveyor for tonnage. By their note inclosed, the vessel is correctly described, and I have every reason to believe that she is for the Italian Government, and not for the Confederates.

"It will be seen by the note of the Surveyor, Mr. Morgan, which I annex, that, as yet, she has nothing in her, so that the information furnished to the Government is, so far, incorrect.

"Special directions have been given to the officers to observe the movements of the vessel, so that whatever takes place can be made known to the Board at any time.

"Respectfully, &c.

(Signed) "S. PRICE EDWARDS."

Mr. Miller to Mr. Edwards.

"Sir,

"Liverpool, February 21, 1862.

"We have built the dispatch-vessel Oretto, for Messrs. Fawcett, Preston, and Co., engineers, of this town, who are the agents of Messrs. Thomas, Brothers, of Palermo, for whose use the vessel, we understand, has been built. She is pierced for four guns; she has taken nothing whatever on board except coals and ballast; she is in no way fitted for the reception of guns, as yet; nor do we know

* Appendix, vol. 1, p. 2.

† Ibid., p. 2.

‡ Ibid., p. 159.

that she is to have guns whilst in England. Mr. Thomas, of the firm at Palermo, frequently visited the ship whilst she was being built.

"We have handed her over to the engineers, and have been paid for her. According to the best of my information the present destination of the vessel is Palermo; and we have been asked to recommend a master to take her out to Palermo.

"I remain, &c.
(Signed) "T. MILLER."

Mr. Morgan to Mr. Edwards.

"February 21, 1862.

"Sir,

"I beg to state that I have inspected the *Oreto*, now lying in Toxteth Dock, agreeably with your directions issued to-day.

"She is a splendid steamer, suitable for a dispatch-boat; pierced for guns, but has not any on board, nor are there any gun-carriages. Coals and ballast are all that the holds contain.

"Respectfully, &c.
(Signed) "C. MORGAN, Collector."

A copy of the Report of the Commissioners of Customs was sent on the 26th February by Earl Russell to Mr. Adams.

Her Britannic Majesty's Minister at Turin, was directed to inquire whether the vessel was intended for the use of the Italian Government; and, on the 1st March, 1862, he telegraphed as follows, "Ricasoli tells me that he has no knowledge whatever of the ship *Oreto*, but will cause inquiry to be made."

Up to this time no information whatever tending to prove that the vessel was intended for belligerent use had been obtained by Mr. Adams, or was possessed by Her Majesty's Government. She had been built for a Liverpool firm of engineers and iron-founders, and was stated by the builders to be for the use of a firm at Palermo, a member of which (himself a native of Palermo) was known to have often visited her whilst building. She was pierced for guns, but not fitted for the reception of them, and had none on board. Beyond this, Mr. Adams's note and Mr. Dudley's letter contained only vague hearsay and conjecture.

No further information could be obtained by Mr. Adams, or was received by Her Majesty's Government, up to the time of the sailing of the ship.

On the 3rd March, 1862, the *Oreto* was registered at the port of Liverpool, in the name of "John Henry Thomas, of Liverpool, in the county of Lancaster, Merchant," as sole owner thereof. The Declaration made by the said John Henry Thomas at the time of registry was as follows:—†

Official Number of Ship, 44,200.—Date of Registry, March 3, 1862.

General Description of Ship.			Port of Registry.	How Propelled.
Name of Ship.	British or Foreign Built.			
<i>Oreto</i>	British, built at Liverpool in 1861		Liverpool	Screw.
Number of Decks	Two.	Build .. .. ..	.. .. ..
Number of Masts	Three.	Galleries .. .. ..	.. .. ..
Rigged	Schooner.	Hold .. .. ..	.. .. ..
Stern	Elliptic.	Framework .. .. ..	.. .. ..
MEASUREMENTS.				
Length from the fore part of Stern under the Bowsprit to the aft side of the head of the stern post				Feet. Tenth.
..	185 2
Main breadth to outside plank	28 3
Depth in hold from Tonnage Deck to Ceiling at Midships	15 7
TONNAGE.				
Tonnage under Tonnage Deck				No. of Tons.
Closed-in Spaces above the Tonnage Deck, if any; viz.: Space or Spaces between Decks	410.41
Poop	
Round-house	
Other enclosed Spaces, if any, naming them	
Gross Tonnage				410.41
Reduction for Space required for Propelling Power				231.90
Length of Engine Room		61 feet.	Register Tonnage	
Number of Engines	2	.. .. ..	178.51
Combined Power (estimated) Horse-power	200	.. .. ..

* Appendix, vol. i, p. 3.

† Ibid., p. 10.

Part V.
The Florida.

"I, the undersigned John Henry Thomas, of Liverpool, county of Lancaster, merchant, declare as follows:—I am a natural-born British subject, born at Palermo, in the Island of Sicily, of British parents, and have never taken the oath of allegiance to any foreign State. The above general description of the ship is correct. James Alexander Duguid, whose certificate of competency or service is No. 4,073, is the master of the said ship. I am entitled to be registered as owner of sixty-four shares of the said ship. To the best of my knowledge and belief no person or body of persons other than such persons or bodies of persons as are by the Merchant Shipping Act, 1854, qualified to be owners of British ships is entitled, as owner, to any interest whatever, either legal or beneficial, in the said ship. And I make this solemn declaration conscientiously believing the same to be true.

(Signed) JOHN H. THOMAS.

"Made and subscribed the 1st day of March, 1862, by the above-named John Henry Thomas, in the presence of—

(Signed) "J. C. JOHNSTONE, Jun., *Registrar of Shipping,*
"Port of Liverpool."

On the 4th March, 1862, the *Oreto* was cleared from the office of Customs, Liverpool, for Palermo and Jamaica, as appears from her Victualling Bill, of which the following is a copy:—*

** Victualling Bill.*

"Pilot Granted number [662].

"PORT OF LIVERPOOL.—ORETO.

"BONDED and Drawback Stores in the
Jamaica. Mes, 52; passengers or troops, Jas. A. Duguid, Master, for Palermo and
; guns, ; 178 tons.

					Net Quantities taken on Board.
Spirits, foreign—					
Rum	Per gallon				2 cases; 54 gallons.
Brandy					10 cases; 20 gallons.
Geneva . . . . .					.. .. .. ..
Other spirits, not sweetened . . . . .					.. .. .. ..
Spirits, British or plantation—					
Rum	Per gallon				8 cases; 16 gallons.
Gin . . . . .					.. .. .. ..
Whisky					12 cases; 23½ gallons.
Other spirits, not sweetened					20 cases; 40 gallons.
Wines	Per lb.				3 chests 5 canisters; 240 lbs.
" (for drawback)					4 bags; 646 lbs.
Beer (for drawback) . . . . .					.. .. .. ..
Vinegar . . . . .					.. .. .. ..
Tea	Per lb.				.. .. .. ..
Coffee . . . . .					.. .. .. ..
" roasted (for drawback) . . . . .					.. .. .. ..
Cocoa . . . . .					.. .. .. ..
" paste . . . . .					.. .. .. ..
Sugar, refined	Per cwt.				1 barrel; 1 cwt. 8 lbs.
" (for drawback)					5 bags } 13 cwt. 2 qrs. 12 lbs.
" unrefined					3 barrels }
" bastard (for drawback) . . . . .					.. .. .. ..
Molasses . . . . .					.. .. .. ..
Tobacco (for drawback)	Per lb.				.. .. .. ..
" negroehead					3 boxes; 63 lbs.
" roll . . . . .					.. .. .. ..
Sugars					2 boxes; 10 lbs. ..
Pepper . . . . .					.. .. .. ..
Raisins	Per cwt.				12 boxes; 2 cwt. 1 qr. 26 lbs.
Currants					11 jars; 2 cwt. 1 qr. 18 lbs.
Figs . . . . .					.. .. .. ..
Prunes . . . . .					.. .. .. ..
Plums . . . . .					.. .. .. ..
Sundries . . . . .					.. .. .. ..
Surplus stores . . . . .					.. .. .. ..

(Signed) J. MUDIE, *Searcher.*

1862.

" , *Collector.*

" SAMUEL WAKEHAM, *Broker,*

" 17, *Park Lane.*

" Examined.

" Cleared, March 4."

The above Victualling Bill is in the usual form, printed, with blanks to be filled up according to the facts in each case. The blanks following the words "passengers or

troops" and the word "guns," respectively, are equivalent to a statement that the vessel had on board no passengers or troops, and no guns. The words "178 tons" denote the registered tonnage of the ship.

It may be convenient here to explain briefly what is meant by the words "Registry" and "Clearance," and what are the duties of the officers empowered to register ships, and of the officers of the Customs in respect to granting clearances.

Registry signifies the recording, in a book kept for that purpose, of the name of a ship which the owner desires to have recognized as a British ship, together with certain particulars composing a general description of the ship.

The effect of registry is to entitle the ship to use the British flag and assume the British national character. The conditions necessary for obtaining registry, in the case of a ship not already registered, are the production to the Registrar of a certificate by the builder, in a form prescribed by law, and of a declaration (also in a prescribed form) that the ship is British-owned.

It is not the duty of the Registrar to question or ascertain the accuracy of either the builder's certificate or the declaration of ownership. As a ministerial officer, he is bound to accept them, if tendered to him. For false statements in the certificate the builder is liable to a penalty; and for making a wilfully false declaration, the owner is liable to be indicted for a misdemeanour, and to forfeit his interest in the ship.

In Great Britain, as in the United States, the law does not positively require the registration of any vessel. But the disadvantages and disabilities incurred by omitting to procure it are practically sufficient to make the registration of British-owned ships universal.

The register, though in ordinary questions arising under municipal law evidence of the title of the person registered as owner, is not conclusive in a question arising between other parties, nor is it necessarily sufficient proof of the national character of the ship. A transfer to a foreigner, at sea or beyond seas, of a registered British ship, is sufficient to change its ownership and the nationality of the vessel, though not followed by any registry. The law of registry is a part of the law by which British trade and navigation are regulated for fiscal and other purposes; and a ship is registered as British on the voluntary declaration of the person claiming to be owner, without further proof.

The number of vessels which were placed on the registers of the various ports of the United Kingdom in the year 1870 was 1,043, of which 970 were built within the United Kingdom.

Clearance signifies the final official act by which the proper officer of Customs notifies that all has been done which the law requires to be done before the departure of ship and cargo. It is purely for Customs purposes, the main objects being to protect the Revenue, and to secure statistics as to the number of ships and quantity of merchandise entering and leaving British ports. As there are in ordinary times no restrictions or duties on the export of articles of any kind from the United Kingdom, no rigid inspection is exercised by the Customs authorities over the general nature of the goods shipped on board vessels in British ports. The attention of the authorities is mainly directed to the shipment of those articles on which an exemption from import duties otherwise payable, or a remission of import duties already paid, is claimed on the ground of their exportation abroad. The object of the inspection is to ascertain that the goods of this nature stated to be thus exported are really shipped and carried away on board the vessel. The agents who ship such goods furnish the Customs Department with statements in the form of shipping-bills, of the amount and nature thereof, and it is the duty of the examining officer to ascertain that the packages placed on board the vessel correspond with these statements. Before starting on his voyage the master of the vessel is bound to produce a paper called a Content, giving the number and description of any packages of merchandise shipped on board, on which exemption from, or remission of duty is claimed, but merely specifying any other articles as "sundry packages of free goods." The master has also to produce a Victualling Bill, enumerating the amount of stores liable to duty (such as tea, spirits, tobacco, and the like), which he has shipped for the use of his crew. These papers are compared with the shipping-bills and certificates already in the possession of the Customs authorities, and if they are found to tally, a label, signed and sealed by the examining officer and Collector, is affixed to the Victualling Bill and certificates, and these papers are delivered to the master as his Clearance.

It is true that, for statistical purposes, the agents to the master of the vessel are required to furnish to the Customs Department a list, called a Manifest, giving the number and description of all packages of goods, whether liable to duty or not, shipped on board the vessel, and the shipping agents or exporters are also required to furnish specifications of all goods, described by the master on his Content as "Sundry packages of free goods," and subsequently further described in his Manifest; but the law does not require that these

particulars should be given before the vessel sails; it is complied with provided they be furnished within six days after she has cleared.

Previously to the year 1867, no penalty was attached by law to the departure of a vessel for foreign ports without a Clearance provided she was in ballast, and had on board no stores except such as were free or had paid duty. Since that date, however, Clearance has been required in these as well as in other cases.

A clearance may not be granted until the master of the ship has declared the nation to which he affirms that she belongs; and a ship attempting to proceed to sea without a clearance may be detained until such a declaration has been made. The officer, however, cannot question, or require proof of, the truth of the declaration. As to the destination of ships sailing from the United Kingdom, the officers of Customs have little or no means of ascertaining this beyond the information which the master or owner gives on entering outwards. It frequently happens that a vessel entered outwards for a specified destination changes her course when at sea, and proceeds to a different destination. There are no means of preventing this.

The number of vessels clearing from ports of the United Kingdom in the course of the year is very great. In the year 1870 the number of clearances granted was 203,031. Of these 13,214 were for vessels sailing from Liverpool, and 17,037 for vessels sailing from London.

On the 22nd March, 1862,* the *Oreto* sailed from Liverpool. Her master was James Alexander Duguid, a master mariner residing at Liverpool and the person named in the above declaration. Her crew were hired, as appears from the Articles signed by them, for a voyage from Liverpool to Palermo, and thence, if required, to a port or ports in the Mediterranean Sea or the West Indies, and back to a final port of discharge in the United Kingdom, the term not to exceed six months. They were not enlisted in the service of the Confederate States; and it is clear, from what subsequently occurred at Nassau, that they had no intention whatever of entering that service, and had at the time of sailing no knowledge or suspicion that the vessel was intended to be employed as a Confederate ship of war.

The subjoined statements, made in the month of August 1862, for the information of the Commissioners of Customs and of Her Majesty's Government, by officers of the Customs at Liverpool, and by the pilot who took the *Oreto* out of the Mersey, further show what was the condition of the vessel at the time of her departure, and the precautions taken in respect of her:—†

Statement of Mr. Edward Morgan.

"I am one of the Surveyors of Customs at this port: pursuant to instructions I received from the Collector on the 21st of February in the present year and at subsequent dates, I visited the steamer *Oreto* at various times, when she was being fitted out in the dock, close to the yard of Messrs. Miller and Sons, the builders of the vessel. I continued this inspection from time to time until she left the dock, and I am certain that when she left the river she had no warlike stores of any kind whatever on board.

"After she went into the river she was constantly watched by the boarding officers, who were directed to report to me whenever any goods were taken on board, but, in reply to my frequent inquiries, they stated nothing was put in the ship but coals.

(Signed) "EDWARD MORGAN, Surveyor."

Statement of Mr. Henry Lloyd.

"In consequence of instructions received from Mr. Morgan, Surveyor, I, in conjunction with the other three Surveyors of the river, kept watch on the proceedings of the vessel *Oreto* from the time she left the Toxteth Dock, on the 4th March last, till the day she sailed, the 22nd of the same month. On one occasion I was alongside of her, and spoke to Mr. Parry, the pilot, and the chief mate. Neither I nor any of the other River Surveyors saw at any time any arms or warlike ammunition of any kind taken on board, and we are perfectly satisfied that none such was taken on board during her stay in the river.

(Signed) "H. LLOYD, Examining Officer."

Statement on Oath of Mr. William Parry.

"I was the pilot in charge of the ship *Oreto* when she left the Toxteth Dock on the 4th March, 1862. I continued on board to the day of her sailing, which was the 22nd of the same month, and never left her save on Sunday, when all work was suspended. I saw the ship before the coals and provisions were taken into her; there were no munitions of war in her, that is to say, she had no guns,

* Appendix, vol. i, p. 161.

† *Ibid.*, p. 34.

carriages, shot, shell, or powder; had there been any on board I must have seen it. I piloted the ship out of the Mersey to Point Lynas, off Anglesey, where I left her, and she proceeded down channel, since which she has not returned. From the time the vessel left the river until I left her she held no communication with the shore, or with any other vessel, for the purpose of receiving anything like cargo on board. I frequently saw Mr. Lloyd, the Tide Surveyor, alongside the ship while in the river.

Part V.

The Florida.

(Signed) " Wm. Parry."

"Sworn before me, at the Custom-house, Liverpool, this 23rd August, 1862.

(Signed) " S. Price Edwards, Collector."

On the 26th March, 1862, Earl Russell received from Mr. Adams a Note* dated the previous day, which contained the following passage:—

"It is with great reluctance that I am drawn to the conviction that the representations made to your Lordship of the purposes and destination of that vessel were delusive; and that, though at first it may have been intended for service in Sicily, yet that such an intention has long been abandoned, in fact, and that the pretence has been held up only the better to conceal the true object of the parties engaged. That object is to make war against the United States. All the persons thus far known to be most connected with the undertaking are either directly employed by the insurgents of the United States of America or residents of Great Britain, notoriously in sympathy with and giving aid and comfort to them on this side of the water."

Mr. Adams proceeded to enlarge on the dissatisfaction felt in the United States at the circumstance that the trade with blockaded ports was (as he alleged) chiefly carried on from Great Britain and her dependencies, and that this was permitted or not prevented by Her Majesty's Government. He added—

"The duty of nations in amity with each other would seem to be plain not to suffer their good faith to be violated by ill-disposed persons within their borders, merely from the inefficiency of their prohibitory policy. Such is the view which my Government has been disposed to take of its own obligations in similar cases, and such it doubts not is that of all foreign nations with which it is at peace. It is for that reason I deprecate the inference that may be drawn from the issue of the investigation which your Lordship caused to be made in the case of the *Oreto*, should that vessel be ultimately found issuing safely from this Kingdom, and preying on the commerce of the people of the United States. Not doubting myself the sincerity and earnest desire of your Lordship to do all that is within your power to fulfil every requirement of international amity, it is to be feared that all the favourable effect of it may be neutralized by the later evidence of adverse results. It is no part of my intention to imply the want of fidelity or of good-will in any quarter. I desire to confine myself closely within the pale of my duty, a representation of the precise causes of uneasiness between the two countries, and an earnest desire to remove them. Firmly convinced that the actual position of things in connection with the hostile equipment in British waters by no means does justice to the true disposition of Her Majesty's Government, I am anxious to place the matter before your Lordship in such a light as to obtain the evidence more perfectly to establish the truth."

In the above Note Mr. Adams inclosed a copy of a letter received from Mr. Dudley, which was as follows:—

Mr. Dudley to Mr. Adams.

"Sir,
"The *Oreto* is still in the river. A flat boat has taken part of her armament to her. A part of the crew of the steamer *Annie Childs*, which came to this port loaded with cotton, have just left my office. They tell me that Captain Bullock is to command the *Oreto*, and that four other officers for this vessel came over with them in the *Childs*. The names of three are Young, Low, and Moffit or Moffit, the fourth was called Eddy; the two first are lieutenants, and the two last-named midshipmen. They further state that these officers during the voyage wore naval uniforms; that they came on the *Childs* at a place called Smithville, some 20 miles down the river from Wilmington; that it was talked about and understood by all on board that their object in coming was to take command of this vessel, which was being built in England for the Southern Confederacy. They further state that it was understood in Wilmington, before they left, that several war vessels were being built in England for the South. As they were coming up the river in the *Childs*, as they passed the *Oreto*, she dipped her flag to the *Childs*. I have had this last from several sources, and the additional fact that the same evening after the arrival of this steamer, a dinner was given in the *Oreto* to the officers who came over in the *Childs*. I understand she will make direct for Madeira and Nassau.

"I have, &c.

(Signed) " Thomas H. Dudley."

* Appendix, vol. i, p. 4.

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The above Note was dated on the third day, and received (with its inclosure) on the fourth day, after the *Oreto* had put to sea.

In answer to the above Note, Earl Russell, on the 27th March, 1862, wrote to Mr. Adams as follows:—*

*Earl Russell to Mr. Adams.**

"Sir,

Foreign Office, March 27, 1862.

"Upon receiving your letter of the 25th instant, I immediately directed that the Treasury and Customs Department should be requested to take such steps as may be necessary to ascertain whether the *Oreto* is equipped for the purpose of making war on the United States, and, if that fact can be proved, to detain the vessel.

"The charge that nearly all the assistance now obtained from abroad by the persons still in arms against the Government of the United States, and which enables them to continue the struggle, comes from Great Britain and its Dependencies, is somewhat vague. I believe the greater part of the arms and ammunition sent from this country to America during the struggle has gone to the United States.

"I agree with you in the statement that the duty of nations in anxiety with each other is not to suffer their good faith to be violated by ill-disposed persons within their borders, merely from the inefficiency of their prohibitory policy. But it is, at the same time, a duty not to punish persons on suspicion without any proof of their evil intent. It is not the custom of this country to deprive any person of liberty or property without evidence of some offence. If such evidence can be obtained, the laws are sufficient to prevent the accomplishment of their evil designs against friendly nations.

"You have not yourself hitherto furnished me with evidence that any vessel has received a hostile or warlike equipment in British waters, which has been afterwards used against the United States. The care that was taken to prevent the warlike equipment of the *Nashville* in British waters, must be familiar to your recollection.

"With regard to co-operation with the policy of the United States in respect to the blockade, I must remind you that Great Britain has abstained, as far as possible, from complaints of the irregularity of the blockade which has been instituted. Her Majesty's Government have been mindful of the suddenness of the danger with which the United States were threatened; of the inadequacy of the naval force then at the disposal of the Government; and of the great difficulty of blockading a coast of 3,000 miles.

"But beyond forbearance, and a liberal interpretation of the law of nations in favour of the United States, Her Majesty's Government cannot go. If by co-operation with the policy of the United States is meant, either taking part in the civil war still raging, or imposing restraints on the Queen's subjects unknown to international law, I cannot undertake that Her Majesty's Government will adopt either of those courses. It would be an unheard of measure to prohibit merchants from sending ships to sea destined to the southern ports. Should such ships attempt to violate the blockade, capture and condemnation are the proper penalty of such attempts; no authority can be found for any other.

"But while these attempts are made on the one side, the United States' Government have willingly received in the ranks of their army, British subjects who violate the Queen's Proclamation in order to serve against the Confederates. Nay, the law of the United States, by which parents can prevent the enlistment of their sons, being minors, has been set aside to the prejudice of British subjects, the fathers and mothers of thoughtless lads of 16 or 17 years of age.

"These evils are, perhaps, inseparable from the unhappy contest now carried on in America. I can only trust it may have a speedy termination, suitable to the reputation of the United States, and conducive to the future happiness of all the inhabitants of a country so lately prosperous and united.

"I am, &c.
(Signed) "RUSSELL."

Information that the *Oreto* had put to sea had not at this time been received by Her Majesty's Government.

On the 8th April, 1862, Earl Russell sent to Mr. Adams the following Report of inquiries made respecting the *Oreto* by order of the Commissioners of Customs:—†

Custom-House, April 4, 1862.

"Your Lordships having referred to us the annexed letter from Mr. Hammond, transmitting, by desire of Earl Russell, a copy of a further letter, addressed by the United States' Consul at Liverpool to Mr. Adams, the United States' Minister at this Court, in which it is again affirmed that the *Oreto* is being fitted out as a vessel of war for the Southern Confederacy, and various statements are reported in support of that assertion, and requesting that your Lordships would instruct this Board to give directions that the *Oreto* might be vigilantly watched, and that, if any armament prohibited by the Foreign Enlistment Act should be discovered, the vessel might be at once detained;

"We report—

"That, on the receipt of your Lordship's reference, we directed our Collector at Liverpool immediately to inquire into the further allegations, made in regard to the *Oreto*, and to govern himself in accordance with the instructions contained in Mr. Hammond's letter, and, having received the Report of the Collector, we find that the vessel in question was registered on the 3rd ultimo, in the name of John Henry Thouses, of Liverpool, as sole owner; that she cleared on the following day for Palermo and

* Appendix, vol. i, p. 6.

† Ibid., p. 7.

Jamica in ballast, but did not sail until the 22nd, the day on which the American Consul's letter is dated, having a crew of fifty-two men, all British, with the exception of three or four, one of whom only was an American. She had no gunpowder, nor even a signal gun, and no colours, saving Maryatt's Code of Signals and a British ensign, nor any goods on board except the stores enumerated on the accompanying copy of her victualling bill.

"With regard to the statements in the letter of the Consul, the Collector further reports that it is clear the passengers brought by the Annie Childs, the vessel therein mentioned, which has recently arrived from one of the Southern States, were not intended to form any portion of the crew of the Oretto, insomuch as they were still in Liverpool, and that the dipping of the ensign on board the latter vessel on the arrival of the Annie Childs, as far as the Collector had been enabled to ascertain, was intended as a compliment to one of the Cuban steamers and another vessel which saluted the Annie Childs on her arrival, the masters of the several vessels being known to one another.

(Signed) "TBO. F. FREMANTLE."
"GRENVILLE C. L. BERKELEY."

This Report was accompanied by a copy of the ship's Victualling Bill.

On the 28th April, 1862, the Oretto arrived at Nassau, as appears by the subjoined entry in the books of the Revenue Department of the Colony of the Bahamas:—*

* *Intervale.*

(No. 48)

"In the British steamer Oretto, Duguid, master, from Liverpool; 178 tons; 12 feet; 52 men.
Ballast.

Nassau, New Providence, April 28, 1862.

On the 29th April she quitted the part of the harbour which is adjacent to the town of Nassau, and proceeded to Cochrane's Anchorage, a station distant from the town about fifteen miles, measuring by the course usually taken by vessels of heavy draught. It was stated that this was done on the advice of the pilot, and for the reason that there was not room for her in the harbour. On the 9th May, 1862, the Governor of the Bahamas received from Mr. Whiting, United States' Consul at Nassau, the following letter:—†

"Sir, *United States' Consulate, Nassau, N. P., May 9, 1862.*
"I have the honour to communicate to your Excellency several facts of importance, deeming it to be my duty so to do, as Representative of the Government of the United States of America.

"The tug Fanny Lewis, which arrived here from Liverpool on the 6th instant, has on board, I am credibly informed by letters received from that port, a large quantity of powder for the rebel States of America, or for the so-called Confederate States.

"On the 28th ultimo the steamer Oretto also arrived off this port from Liverpool, and now lies at Cochrane's Anchorage, where, it is believed, and so reported by many residents here, that she is being prepared and fitted out as a Confederate privateer, to prey on the commerce of the United States of America.

"I inclose for your Excellency's perusal a slip from the Wilmington North Carolina paper of the 20th April.

"I cannot but think that your Excellency will consider it proper that some inquiry should be made, to ascertain how far the vessels alluded to are preserving the strict neutrality so earnestly enjoined by Her Majesty's late Proclamation, and I am confident that I pay but a deserved tribute to your Excellency's high character when I express my firm belief that no illegal steps will be allowed to those who seek to subvert the Government which I have the honour to represent.

"I am, &c.
(Signed) "SAML. WHITING, *United States' Consul.*"

Mr. Whiting was on the same day informed in answer by the Colonial Secretary, that the Governor would cause inquiries to be made into the circumstances alleged in his (Mr. Whiting's) letter. The letter was at the same time referred, by order of the Governor, to the Attorney-General of the Colony, who reported as follows:—†

"Assuming the cargo of the Fanny Lewis to be such as is stated by the United States' Consul, it is nevertheless one that can legally be imported here from the United Kingdom, and its future presumed destination does not invest it with any character of illegality which calls for, or would authorize any action with respect to it on the part of the Executive or other authorities of the Colony.

"2. With respect to the Oretto, the Consul's allegation is to the effect that it is believed and reported by many residents here that she is being prepared and fitted out where she now lies at Cochrane's Anchorage, which is within the limits of the port of Nassau, as a Confederate privateer. Now if such is the fact, an offence against the Foreign Enlistment Act has been committed, all parties implicated in which are liable to be criminally proceeded against for misdemeanor, and the vessel may be seized by any naval or revenue officer; but to justify proceedings either against the parties or the vessel, the matter must not rest on repute or belief alone, but the authorities must have positive facts to

* Appendix, vol. i, p. 58.

† Ibid., p. 14.

‡ Ibid., p. 15.

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ground their proceedings on, and unless the Consul can adduce such, or they can be obtained through other channels, no steps can be taken either for the arrest of the vessel, or those on board of her.

(Signed) "G. C. ANDERSON."

On the 28th May, 1862, Commander McKillop, commanding Her Majesty's ship *Bulldog*, wrote to the Governor as follows:—*

"Sir,
"Several steamers having anchored at Cochrane's Anchorage, I sent an officer yesterday to visit them and muster their crews, and ascertain what they were and how employed.

"The officer reports that one steamer, the *Oreto*, is apparently fitting and preparing for a vessel of war; under these circumstances, I would suggest that she should come into the harbour of Nassau to prevent any misunderstanding as to her equipping in this port, contrary to the Foreign Enlistment Act, as a privateer or war vessel.

"I am, &c.
(Signed) "H. F. MCKILLOP."

No facts were furnished by Commander McKillop in support of the statement, that the *Oreto* was "apparently fitting and preparing for a vessel of war." On receiving this communication the Governor requested Commander McKillop to take such steps as he might think best for ascertaining the true character of the *Oreto* and the nature of her equipment; and if he should be convinced that she was really a man of war or privateer arming herself there, to concert measures for bringing her down into the part of the harbour adjacent to the town, or else to remove his own ship to Cochrane's Anchorage and there watch her proceedings from day to day.

Early in the month of June 1862, the consignees of the vessel, who were a mercantile firm at Nassau, applied to the Receiver-General (the proper officer for that purpose) for permission to load her for an outward voyage to St. John's, New Brunswick.

Her Majesty's Government is informed and believes that during the blockade of the Confederate States it was a common practice for ships leaving the port of Nassau, with the intention of endeavouring to run their cargoes into the blockaded ports, to clear for St. John's, New Brunswick, and many of them took in their outward cargoes at the anchorages adjacent to the harbour of Nassau. In the application itself, therefore, there was nothing peculiar; but, in consequence of the suspicions which had arisen about the ship, the Receiver-General, before granting the usual permission to load, referred the matter to the Governor, and it was brought by him before the Executive Council of the Colony on the 4th June, 1862, when the following Order was made:—†

"June 4, 1862.

"At an Executive Council his Excellency the Governor, with the advice of the Board, was pleased to make the following Order:—

"1. That the *Oreto*, if practicable, should take in her cargo within the port of Nassau.

"2. That if however it be found impracticable, from the depth of water in port or otherwise, that she cannot conveniently take in her cargo within the port, then that she be permitted to do so at Cochrane's Anchorage, under the direct supervision of officers of the Revenue Department, to be specially appointed for the purpose.

"3. That in consequence of the suspicions which have arisen respecting the character of the *Oreto*, it is advisable that a British vessel of war should remain at Cochrane's Anchorage, in the immediate vicinity of the *Oreto*, while she is taking in cargo, and to prevent such vessel being detained at the anchorage an inconveniently long time there be imposed as a condition, for the permission for the *Oreto* to load without the port, that she complete her loading at Cochrane's Anchorage, within a period to be designated by the Chief Officer of the Revenue Department.

"His Excellency was further pleased to direct that a copy of the foregoing Order be furnished to the Receiver-General and Treasurer, and the Commander of Her Majesty's ship *Bulldog*, respectively, for their information and guidance."

On the same 4th June, 1862, the United States' Consul sent to the Governor the subjoined letter and inclosure:—‡

"Sir,
"United States' Consulate at Nassau, N.P., June 4, 1862.

"I have the honour to inform your Excellency that I am in receipt of a communication from one of the crew (in prison here), of the steamer *Oreto*, now lying at Cochrane's Anchorage, a copy of which I inclose.

"May I request your Excellency to inform me if any steps have been taken by the Colonial Government to ascertain the true character of the *Oreto*, the service for which she is intended, and if her longer stay at Cochrane's Anchorage, under all the circumstances disclosed, is in accordance with Her Majesty's late Neutrality Proclamation.

"I am, &c.
(Signed) "SAM'L WHITING, Consul."

* Appendix, vol. i, p. 16.

† Ibid., pp. 19 and 53.

‡ Ibid. p. 19.

(Inclosure.)

Mr. Jones to Mr. Whiting.

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"Sir,

" The ship I am from is the Oretto, built by W. C. Miller, in Liverpool, after the model of the English Navy gun-boats, with magazine, shot-lockers, ports and bolts for twenty guns. Everything is rigged, and ready for mounting; even all the articles necessary for seamen, such as hammocks, bedding, kettles and pans, with three years' provisions. In short, she is a perfect man-of-war. Captain, James Duguid; chief officer, William Duggin; second officer, — Hudson; I, Sir, was third officer and boatswain; the chief steward and purser, who refused duty, are in jail here.

" Nassau Prison, June 4, 1862.

" Yours, &c.

(Signed) " EDWD. JONES."

The Consul renewed his representations on the 12th June.*

In conformity with the above resolutions of the Executive Council, the Commander of the Bulldog proceeded to Cochrane's Anchorage, put one of his officers in charge of the Oretto, and placed his own ship near her. On the 7th June she was removed by the consignees to the part of the harbour close to Nassau.

On the 8th June, 1862, the Governor received from Commander McKillop a letter dated the 6th,† reporting that he had visited and examined the Oretto; that she was fitted for war purposes, and had fittings at variance with the character of a merchant-vessel, but had on board no guns or ammunition.

On the 9th June the consignees began to load the vessel with cargo, part of which consisted of arms and ammunition, including some boxes of shells. On the morning of the 10th, however, the cargo which had been put on board was discharged, the consignees having obtained leave to land it, and to clear the vessel in ballast for the Havana.

Commander M'Killop quitted Nassau on the 9th June, and was succeeded, as Senior Naval Officer at the port, by Commander Hickley, of Her Majesty's ship Greyhound. On the 10th June, Commander Hickley went on board the Oretto, but, being informed that she had cleared for the Havana in ballast and was to sail shortly, forbore at that time to examine her. On the 13th, he again went on board of her, and sent in a Report to the Governor, which was as follows:—‡

" Greyhound, Nassau, New Providence, Bahamas,
" June 13, 1862.

" Sir,
" On going on board the Oretto this morning, the captain informed me that the crew had refused to get the anchor up until they could be certain as to where the ship was going, as they did not know what might become of them after leaving port, and that the Oretto was a suspicious vessel. I then proceeded round the decks to note her fittings &c., and to ascertain whether she had any warlike stores on board for her own equipment, and I have the honour to make the following Report:—

" That the Oretto is in every respect fitted as a man-of-war, on the principle of the dispatch gun-vessels in Her Majesty's Naval Service.

" That she has a crew of fifty men, and is capable of carrying two pivot-guns amidships and four broadsides both forward and aft, the ports being made to 'ship and unship,' port bars, breeching, side tackle, bolts, &c.

" That she has shell-rooms, a magazine and light-rooms, and 'hanging-scuttles' for handling powder out of the magazine, as fitted in the naval service, and shot boxes for Armstrong shot, or shot similar to them. Round the upper-deck she has five boats (I should say), a ten-oared cutter, an eight-oared cutter, two gigs, and a jolly-boat, and davits for hoisting them up,—her accommodation being in no respect different from her similar class of vessel in the Royal Naval Service.

" And on my asking the captain of the Oretto, before my own officers and three of his own, whether she had left Liverpool fitted in all respects as she was at present, his answer was, ' Yes, in all respects,' and 'that no addition or alteration had been made whatever.'

" In witness of this Report, and ready to testify to its correctness, we, the Undersigned, affix our names.

(Signed)

" H. D. HICKLEY, Commander.

" JNO. L. GILBY, Lieutenant,

" C. S. CARHALL, Lieutenant,

" B. R. STUART, Master.

" P. O. M. PRESGRAVE, Assistant Paymaster.

" E. B. GIDLEY, Gunner.

" E. EDWARDS, Carpenter.

" W. ROSKILLY, Gunner's Mate.

" JOHN LEWAN, Seaman Gunner."

The Attorney-General of the Colony, being called upon to advise the Governor upon this Report, gave his opinion that it would not justify the detention of the vessel.

* Appendix, vol. i, p. 21.

† Ibid., p. 20.

‡ Ibid., p. 23.

On the 15th June some of the crew of the *Oreto* came on board the *Greyhound*, and stated to Commander Hickley that they had left the *Oreto* because they were not able to ascertain her destination, and that she was endeavouring to ship another crew. Commander Hickley thereupon seized the vessel, but, on the morning of the 17th, released her, the Attorney-General being still of opinion that there was not evidence sufficient to justify a seizure. Notwithstanding this opinion, however, the seizure was forthwith (namely, on the morning of the 17th June) renewed, with the sanction of the Governor, that officer holding that, after the statements which had been made to him by Commander Hickley, it was right and proper to submit the case to judicial investigation. The sanction of the Governor was given on the 17th June, and proceedings were, by his direction, forthwith instituted in the Vice-Admiralty Court of the Colony (which was and is the Court having by law jurisdiction in matters of this nature) for the condemnation of the vessel.

On the trial of the case, the following witnesses were examined on behalf of the Crown:—

Wynn Fely James Duggan, Chief Officer of the *Oreto*.
 William Porter, seaman of *Oreto*.
 Peter Hanson, seaman of *Oreto*.
 Charles Ward, steward of *Oreto*.
 Walter Irving, fireman of *Oreto*.
 John Quinn, fireman of *Oreto*.
 Thomas Robinson, fireman of *Oreto*.
 Daniel Hamy, coal-trimmer of *Oreto*.
 Commander Hickley, of Her Majesty's ship *Greyhound*.
 Thomas Joseph Waters, master mariner in the Merchant Service.
 Lieutenant Cardale, Royal Navy.
 Bay Beaufoy Staart, master and pilot of Her Majesty's ship *Greyhound*.

One of the firm of merchants who were consignees of the vessel at Nassau, the master under whom she had made her outward voyage, and other witnesses, were examined for the defence. The consignee, in the course of his evidence, made the following statements on oath:—*

"We (meaning his firm) had the sole direction and management of the *Oreto*. I know of no person but Captain Duguid having any control over the *Oreto*. . . . In placing the cargo on board the *Oreto*, it was distinctly understood as cargo. I stated to the Receiver-General that it was cargo only, that we intended to ship a full load by that vessel. We were fully aware that we could not ship such goods otherwise than as cargo, unless committing a breach of the Foreign Enlistment Act; and had we been ordered to do it, we should have handed the consignment over to some one else. No act was done by authority of Henry Adderley and Co. [the witness's firm] with the intent that the vessel should be employed as a cruiser."

On cross-examination, he stated as follows:—

"The vessel was consigned to us by Messrs. Fraser, Trenholm, and Co., of Liverpool. She was consigned to us as a merchant-vessel, and we considered her as such. No instruction in the first instance was given to us, except the general instructions of shipping cargoes by all their vessels to Messrs. W. and R. Wright, St. John's, New Brunswick, on account and risk of J. R. Armstrong, of Liverpool. Mr. John Lowe, I think, brought a letter of introduction from Mr. Trenholm to the firm. I do not know whether Mr. Lowe was in any way interested in the *Oreto*. I do not recollect Mr. Lowe being mentioned in any correspondence which we received from Fraser, Trenholm, and Co. We never had any transactions with Mr. Lowe in regard to the *Oreto*. She remained here several weeks before any attempt was made to ship cargo in her. We thought we should receive some instructions from our friends about her, but we did not. The shipping of the cargo on board the *Oreto* was performed by us under our general instructions. I am not prepared to say whether the vessel was actually going to St. John's, New Brunswick."

The master, James Alexander Duguid, gave evidence as follows:—†

"I am master of the *Oreto*. . . . The owner of the *Oreto*, I believe, is named Mr. Thomas. I took my instructions from Fawcett, Preston, and Co., the agents. . . . I arrived here at the latter end of April. I went to Cochrane's Anchorage, and communicated with H. Adderley and Co. as the agents of the vessel representing my owners in England. I had no instructions, when leaving England, who the agents of the vessel were; but on my arrival here I understood who they were. Mr. Lowe had a letter, and told me that Messrs. Adderley and Co. were the agents of the vessel, and they would enter the ship. I remained at Cochrane's Anchorage seven weeks; we were waiting orders

from the agents, who were waiting orders from the owners at home. . . . The shell was taken on board by the direction of the agents. I never thought that it was intended for the vessel, neither did I know that it was. . . . I had not intent, nor would I do so, to use the *Oreto* to commit hostilities against any Power or State."

On cross-examination he said—*

"I received my instructions from Messrs. Fawcett, Preston, and Co. as to the voyage. They were written. [The instructions were produced in Court.] In the conversation referred to in the letter dated 22nd March, 1862, I proposed going to Nassau instead of Havana. No instructions were given to me as to the ultimate destination of the vessel after she reached Nassau. . . . I had no knowledge whatever, when the vessel cleared for Havana, that she was ultimately bound to the Confederate States of America. I have no knowledge whether the vessel was to return to Europe or not; I have no knowledge one way or the other. I have no knowledge whatever that she had been sold or agreed to be sold to any persons in the Confederate States."

With respect to the crew of the vessel, the consignee gave evidence as follows:—†

"We had some difficulty with the crew. They set up a plea that the vessel, not having touched at Palermo, there had been a deviation of the voyage, and therefore they claimed their discharge. We demurred to this, but afterwards agreed to pay them their wages up to date, and give them a bonus of 5*l.* and pay their passage to England if they would not remain in the ship. This they refused to accept, stating that, from the several visits of the officers of the man-of-war on board the vessel, they considered she was of a suspicious character, and that they would not go in her unless the Governor and Captain Hickley guaranteed their safety. Some accepted the terms that were offered. In consequence of this they were summoned before the police magistrate, and the case was brought under his adjudication. They elected to take their discharge. I was present at the time they then and there agreed to quit the ship. They then obtained leave to go on board for their clothes. The men were discharged by the magistrate. In consequence of this we got a shipping-master to ship another crew for the *Oreto*. I think there were fifteen or sixteen new hands then shipped. They received the usual advance. It was our intention to send her immediately to sea. I had arranged with the pilot to take her out the following morning (Sunday); they, however, missed the tide, the crew not having come on board. The vessel was again seized that day. The crew we shipped then left the *Oreto*. I have not seen them since, and all the advance that we paid is lost."

As to the same matter, the master stated as follows:—‡

"Two mornings following, previous to this seizure (I mean on Friday and Saturday), I ordered my crew to get the vessel under way, but they refused, stating that I had deceived them once, and that they would not believe what I told them again. I told them she was cleared for Havana, and bound there as far as I knew. They still continued to refuse to work, and said that they would not believe anything that I told them. In consequence of this I sent warrants on board for them. They all appeared before the Magistrate. They said that they would not proceed in the vessel unless they were guaranteed that they would be safe from any American cruisers. They then said that they would take their discharge, and the whole of them took their discharge."

On the 2nd of August, 1862, the Judge of the Court pronounced judgment in the case, reviewing at considerable length the evidence which had been produced on both sides, and stating what, in his opinion, was the effect and value of that evidence. At the beginning, he said:—§

"To support the libel, it is necessary that proof should be given—

"1st. That the aforesaid parties, having charge of the *Oreto*, while the vessel was within the jurisdiction of the Vice-Admiralty Court of the Bahamas, attempted to equip, furnish, and fit her out as a vessel of war;

"2ndly. That such attempt was made with the intent that she should be employed in the service of the Confederate States of America; and,

"3rdly. That such service was to cruise and commit hostilities against the citizens of the United States of America. Witnesses have accordingly been produced to prove that the *Oreto* is constructed for and fitted as a war-vessel; that acts have been done in her, since she came to Nassau, which constitute an attempt to equip, fit, and arm her as a vessel of war. That from certain conversations which were overheard between the master of the vessel and a person who came out passenger in her, and from certain acts done by this person, there is proof that she was intended for the service of the Confederate States of America, and to cruise against the citizens of the United States."

After recapitulating the substance of the evidence, he said:—||

"The question now to be decided is, whether, upon a careful consideration of the evidence, there appears proof or circumstantial evidence amounting to reasonable proof, that a violation of the provi-

* Appendix, vol. i, p. 50.

† *Ibid.*, p. 39.

‡ *Ibid.*, p. 46.

|| *Ibid.*, p. 50.

§ *Ibid.*, p. 49.

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sions of the Foreign Enlistment Act has been committed by the parties having charge of the Oreto. First, by attempting, by any act done since she came into this Colony, to fit or equip the Oreto as a vessel of war. Secondly, by making such attempt for the purpose of fitting and equipping her as a vessel of war for the service of the Confederate States of America, to cruise and commit hostilities against the citizens of the United States of America. I have already said that what took place before the vessel came here can only be received as elucidatory or explanatory of what has occurred since that time. Two facts have been proved, both of which, it has been contended, are violations of the Act. One is that, while the vessel lay at Cochrane's Anchorage, some blocks were strapped in such a manner that they might be used as gun-tackle blocks, and that they were so called in an entry in the ship's log-book, and by some of the crew. The other, that a number of boxes containing shells were put in the ship after she came into this harbour, and were taken out again."

He arrived at the conclusion that there was no sufficient evidence of any act done, or attempt made, since the Oreto had come to the Colony, to fit out or equip her as a vessel of war.

He was further of opinion that, although the vessel might not be calculated to carry the ordinary bulky cargo of merchant-ships, she was capable of carrying a considerable quantity of some kinds of cargo, and that it was not improbable that a vessel of her description might be used for running the blockade.

He was also of opinion that the evidence connecting her with the Confederate States, as a vessel to be used in their service to cruise against the United States, was "slight."^{*}

"It rests entirely on her connection with a gentleman named Lowe, who came out passenger in her, and some evidence has been given from which it may be inferred that Mr. Lowe is connected in some way with the Southern States. He is said by some of the crew to have exercised some control over the Oreto. This is denied on oath by Mr. Harris and Captain Duguid. But assuming it to be true, and assuming also that Mr. Lowe is connected with the Confederate States, no one can state that Mr. Lowe, or his employers, if he have any, may not have engaged the Oreto for the purpose of carrying munitions of war, which we have seen she is well capable of doing, and this would not have been an infringement of the Act under which she is libelled. But the evidence connecting the Oreto with the Confederate States rests almost entirely on the evidence of the steward, Ward, whose testimony I have already explained my reasons for receiving with much doubt."

The Judge, therefore, made a decree for the restoration of the vessel to the master claiming on behalf of the alleged owner, John Henry Thomas—

"Under all the circumstances of the case, I do not feel that I should be justified in condemning the Oreto. She will, therefore, be restored.

"With respect to costs, although I am of opinion that there is not sufficient evidence of illegal conduct to condemn the vessel, yet I think all the circumstances of the case taken together seem sufficient to justify strong suspicion that an attempt was being made to infringe that neutrality so wisely determined upon by Her Majesty's Government. It is the duty of the officers of Her Majesty's Navy to prevent, as far as may be in their power, any such infringement of the neutrality. I think that Captain Hickley had *prima facie* grounds for seizing the Oreto; and I therefore decree that each party pay his own costs."

The assumption, on which the Judge appears to have proceeded, that evidence of acts done before the Oreto arrived at the Bahamas could not be received, unless for the purpose of explaining or elucidating acts done after her arrival, may have been erroneous, and Her Majesty's Government believes that it was so. Her Majesty's Government believes that in a proceeding *in rem* against a ship, to enforce a forfeiture for an alleged infringement of the statute, a Court, wherever locally situate within the dominions of the Crown, might lawfully receive and adjudicate upon evidence of such infringement, wherever the act or acts constituting it might have been committed.

The decision, however, although founded in part on an assumption that Her Majesty's Government considers *opere*, at least, to grave doubt, was the judgment of a Court of competent jurisdiction, and was, as such, binding on the executive authorities of the Colony. And it is further to be observed, that proof of acts done out of the limits of the Colony, had it been tendered and admitted, could not have altered the decision of the Court, unless it had supplied evidence also of an unlawful intention.

Her Britannic Majesty's Government, on the 31st July, 1862, received from the Governor of the Bahamas intelligence of the measures taken in respect of the Oreto.

The seizure of the vessel was approved by Her Majesty's Government, and the Governor was informed that she should be detained until instructions could be given as to what further process should be instituted.† The Lords Commissioners of the Treasury

* Appendix, vol. i, p. 52.

† Ibid., pp. 29, 31, *et seq.*

were at the same time requested to consider the propriety of sending an officer of Customs from Liverpool who could give evidence of the facts which occurred in regard to the *Oreto* at that place, and inquiries with that view were forthwith made by the Commissioners of Customs.

Intelligence of the Decree of the Vice-Admiralty Court of the Bahamas, ordering the restoration of the *Oreto*, was received by Her Majesty's Government on the 16th September, 1862.

The *Oreto* was released, in obedience to the Decree of the Court; and on the 7th August, 1862, she was cleared at the Nassau Custom-house as a merchant-vessel with cargo, for St. John's, New Brunswick, as appears from the subjoined copy of the manifest of cargo, extracted from the books of the Revenue Department of the Bahamas:—*

"Outwards."

Manifest of Cargo on board British steamer *Oreto*, A. L. Read, master, for St. John's N.B. 178 tons; 12 feet water; 52 men.

"4 kegs white lead.	"28 barrels bread.
"3 barrels oil.	"8 cheese.
"2 puncheons rum.	"3 kegs butter.
"6 cases $\frac{1}{2}$ and $\frac{1}{2}$ boxes tobacco.	"8 bags pepper.
"4 barrels sugar.	"4 boxes candles
"4 bags coffee.	

(Signed) "J. L. READ.

"Nassau, New Providence, August 7, 1862."

On or about the 7th August the *Oreto* sailed from Nassau. Of the subsequent history of this vessel, from the time of her leaving Nassau to that of her arrival in a port of the Confederate States, Her Britannic Majesty's Government has no knowledge; but it has been informed and believes that she was subsequently armed for war by a Captain Maffit, who had formerly held a commission in the United States' Navy, and was then a commissioned officer in the service of the Confederate States; that she was then commissioned as a ship-of-war of the Confederate States, under the command of the said Maffit, and her name changed from "the *Oreto*" to "the *Florida*;" and that, after keeping the sea for a few days, she put in at the port of Cardenas, in Cuba, where (or at the Havana) she remained for nearly a month. On the 4th September the vessel arrived at and entered the port of Mobile in the Confederate States, which was then blockaded by three United States' ships of war. She remained in port for upwards of four months. She was repaired and refitted, and shipped a crew, and, in January 1863, was sent to sea from Mobile, under the command of Maffit, as a Confederate States' ship-of-war.

The United States' Consul at Nassau, after the departure of the vessel, and on the 8th September, 1862, wrote to the Governor as follows:—†

"United States' Consulate, Nassau, New Providence,
"Sir, "September 8, 1862.

"I have the honour to inform your Excellency that I have good authority for stating that the schooner *Prince Alfred*, of Nassau, took the *Oreto*'s armament from this port and discharged the same on board that steamer at Green Cay, one of the Bahamas. That the *Oreto* afterwards left Green Cay with the Secession flag flying at her peak. That the *Prince Alfred* has returned to this port, and now lies at Cochrane's Anchorage, and I am credibly informed that her Captain is again shipping men to be sent to the *Oreto*, in direct contravention of the Foreign Enlistment Act.

"I earnestly urge upon your Excellency the propriety of instituting some inquiry into these matters, and of preventing acts so prejudicial to the interests of the friendly Government which I have the honour to represent.

"I have, &c.
(Signed) "SAMUEL WHITING."

The Colonial Secretary replied as follows:—

"Sir, "Colonial Office, Nassau, September 9, 1862.
"In reply to your letter of the 8th instant, directed to the Governor, I am instructed by his Excellency to inform you that, if you feel assured that you have sufficient credible evidence to substantiate your allegation, and will put your evidence into the hands of the Attorney-General, his Excellency will direct a prosecution against the Captain of the *Prince Alfred*, or others who may have been guilty of violating the Foreign Enlistment Act.

"But his Excellency has no authority to take any steps against the *Oreto*, which is out of his Excellency's jurisdiction.

"I have, &c.
(Signed) "C. R. NEARITT, Colonial Secretary."

* Appendix, vol. i, p. 58.

+ Ibid., p. 87.

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The Florida.

No evidence whatever in support of the allegations of the Consul appears to have been furnished by him, and no facts were produced on which a prosecution could be founded.

The subsequent history of the Florida, so far as it is known to Her Majesty's Government from official Reports and other sources, is as follows.

On the 25th January, 1863, the Florida came into the harbour of Nassau, where she remained twenty-six hours; and on the 24th February she put in at Barbados, where she remained about two days (being detained for twenty-four hours at the request of the United States' Consul in order to allow time for the sailing of a United States' merchant-vessel then in the harbour). Each of these Colonies had been repeatedly visited by United States' ships of war. It was alleged that in each of them some advantage or indulgence which United States' vessels had not enjoyed had been granted to the Florida. But it was shown by the Governors of those Colonies that this assertion was entirely erroneous, and that no advantage was conceded to the Florida which had not been before granted to cruizers of the United States. It appeared, however, that both the United States' ship San Jacinto and the Confederate ship Florida had been permitted to obtain coal at Barbados within a less time than three months after they had respectively coalled at another British Colony, the Commander of each vessel having alleged that his supply of coal had been exhausted by stress of weather. In consequence of this the following despatch was addressed by Her Majesty's Secretary of State for the Colonies to the Governor of Barbados; and instructions, substantially to the same effect, were sent to the Governors of the other British Colonies in the West Indies:—*

"Sir,

"Downing Street, July 16, 1863.

"I have received and had under my consideration your despatch of the 7th March, giving an account of certain communications which have passed between yourself and Rear-Admiral Wilkes, of the United States' Navy.

"You were quite right in refusing to enter into correspondence with that officer upon the matter adverted to in his despatch of the 5th March. On this and other occasions it has become evident that interviews and explanations such as you accorded to Rear-Admiral Wilkes were made the pretext for placing on record charges more or less direct against officers of Her Majesty. And I think that, as the Governor of one of Her Majesty's Colonies owes no explanation of his conduct to an officer of the United States' Navy, it will be prudent hereafter to avoid such explanations as far as the rules of courtesy will allow. It is the wish of Her Majesty's Government that matters of complaint should in general be discussed between the two Governments concerned rather than between any subordinate officers.

"With regard to the issue of coal to the war-vessels of the belligerents, you have, I think, allowed yourself too much liberty in giving the 'special permission' to take in fuel contemplated in Her Majesty's Proclamation. Coal, in the opinion of Her Majesty's Government, ought not to be supplied to a vessel of war of either belligerent except in such quantity as may be necessary to carry such vessel to the nearest port of her own country (or, of course, any nearer port), and this, I will add, without reference to the question whether the ports of that country are or are not under blockade. In case of such blockade it will rest with the officer in command to seek some more convenient destination. If within the period prescribed by the Proclamation a vessel thus furnished with coal in one of Her Majesty's possessions should apply for a second supply in the same or another Colony, the application may be granted if it is made to appear that, owing to real necessities arising from stress of weather, the coal originally given has been prematurely exhausted before it was possible that the vessel could, under existing circumstances, have reached the destination for which she coalled.

"But if it should be the case that the vessel has not, since taking in coal, been *bona fide* occupied in seeking her alleged destination, but has consumed her fuel in cruising, the coal should not be replenished under the terms of the Proclamation. Such a case is not one to which 'special permission' referred to in that Proclamation was intended to apply.

"Her Majesty's Government are of opinion that the regulations of the Proclamation thus interpreted should be strictly adhered to without any arbitrary concession to either belligerent. It is by such a course that misunderstandings and complaints of partiality will be most certainly avoided. An unauthorized concession to one belligerent, it may be safely assumed, will not be accepted by those to whom it is made as a justification of a similar concession in an opposite direction.

"I approve of your having communicated to the officers administering the Government of the other West Indian Islands the fact that certain Federal and Confederate vessels of war had called at Barbados.

"I shall instruct the Governors of the other islands to follow the same course, communicating in all cases the name of the vessel, its alleged destination, and the date of receiving the coal, and the quantity allowed to be placed on board.

"I have, &c.
(Signed) "NEWCASTLE"

On the 8th May, 1863, the Florida entered the harbour of Pernambuco, and received permission to remain there for twenty-four hours. Captain Maffit stated to the President of the Province that the machinery of his ship was out of order and required repair; and

he obtained, on this ground, leave to stay for three or four days. The machinery was repaired on shore, and he sailed on the 12th May.

The United States' Consul at Pernambuco addressed a remonstrance to the authorities protesting against any accommodation being granted to a vessel which he insisted should be regarded as piratical.

The President replied that there had been no infringement of the letter or spirit of international law in the course which had been pursued by the authorities; that he could not agree with the Consul in regarding the Florida as piratical, and could not admit his protest.

On the 16th July, 1863, the Florida came into the port of St. George's, Bermuda, her Commander having previously applied for and obtained leave to enter for the purpose of procuring coals and making necessary repairs. Being unable to obtain coal from private persons, Captain Maffit requested to be allowed to purchase some from the Government stores, and he requested also that permission might be given him to have his ship repaired in the Government Dockyard. These requests were refused, as appears from the following correspondence:—*

Mr. Walker to Governor Ord.

"Sir,
"At the request of Captain Maffit, commanding Confederate States' steamer Florida, I have the honour to inform your Excellency that, on his application at the dockyard this morning for coal, he was informed by Captain Glasse that, under his present instructions, he did not feel authorized to furnish the Florida with the small amount even which Captain Maffit required.

"As the Florida must therefore of necessity be detained at this port as a vessel in distress until the arrival of coals which are daily expected, Captain Maffit begs me to inquire of your Excellency if the privilege will be accorded to him of proceeding to the dockyard for the purpose of having effected some repairs to machinery and hull of ship, which are of essential importance, and which cannot be effected in the port of St. George's.

"I have, &c.
(Signed) "NORMAN STEWART WALKER."

Governor Ord to Mr. Walker.

"Sir,
"I have the honour to acknowledge the receipt of your letter of the 18th instant, informing me, at the request of Captain Maffit, of the Confederate States' steamer Florida, that, having applied yesterday at the dockyard for coal, he was informed by Captain Glasse, R.N., that he did not feel authorized to furnish the Florida with the small amount she required, and further stating that, as the Florida must therefore of necessity be detained at this port as a vessel in distress until the arrival of coals, which are daily expected, Captain Maffit begs you to inquire whether the privilege will be accorded to him of proceeding to the dockyard for the purpose of having effected some repairs to machinery and hull of ship which are of essential importance, and which cannot be effected in the port of St. George's.

"Having referred this application to Captain Glasse, Superintendent of the dockyard, I have the honour to acquaint you that he informs me that he does not feel himself at liberty to allow of any repairs to the machinery or hull of the Confederate States' steamer of war Florida being effected in Her Majesty's dockyard.

"In making this communication I have to express a hope that Captain Maffit may yet find it in his power to obtain for his vessel such supplies of coal, and such necessary repairs as will enable her to proceed without delay to her destination, but I must at the same time point out that Her Majesty's instructions (with a copy of which Captain Maffit was supplied on the 16th instant) are very stringent as to the limitation of the stay in British waters of vessels of war of the United States or Confederate States, and that it is necessary that whatever may be required to enable the Florida to take her departure from these islands should be provided in the shortest possible period. If, however, Captain Maffit should find it impossible to procure at the present time whatever may be requisite for this purpose, I must request that he will at once proceed with the Florida to Grassy Bay, there to remain until his departure from the Colony is rendered practicable.

"I have, &c.
(Signed) "H. ST. GEORGE ORD."

Mr. Walker to Governor Ord.

"Sir,
"Since the communication which I had the honour to address to your Excellency on Saturday evening last, Captain Maffit has been informed that there is a large quantity of coals at this port belonging to the Commissariat Department.

"He, therefore, requests me, in his great emergency, to apply, through your Excellency, to the proper officers, for a quantity sufficient to carry his vessel to some other coaling depot.

* Appendix, vol. i, p. 109.

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The Florida.

"Captain Maffit will be happy to have the opportunity of paying for the coals in coin immediately, or of having them returned in kind, within two or three weeks, at any point in the island which may be indicated.

"I have, &c.

(Signed) "NORMAN STEWART WALKER."

Governor Ord to Mr. Walker.

"Sir,

"Mount Langton, July 20, 1863,

"I have the honour to acknowledge the receipt of your letter of this day's date, requesting, on behalf of Captain Maffit, Confederate States' steamer Florida, that he may be permitted to take from a large quantity of coal belonging to the Commissariat Department at St. George's, a quantity sufficient to carry his ship to some other coaling depot.

"In reply, I have to inform you that the coal in question is not under my control, but under that of Colonel Munro, the Commandant of the Troops.

"I have, &c.

(Signed) "H. ST. GEORGE ORD."

Colonel Munro refused to allow coal to be supplied to the Florida from the Commissariat Department. She subsequently obtained some from a vessel which arrived at the Colony from Halifax.

The Commandant of the fort at Bermuda had, on the arrival of the Florida there, consented to exchange salutes with her. This act was disapproved by Her Majesty's Government, for the reason that, whilst Great Britain had recognized the Confederate States as a belligerent, she had not recognized those States as independent or their Government as a sovereign Government.

On the 23rd August, 1863, the Florida arrived at Brest, having, two days before, taken and destroyed at sea a United States' merchant-ship bound from Liverpool to New York. The following Report of what then occurred at Brest was subsequently furnished to Her Britannic Majesty's Government by Her Majesty's Consul at Brest, and is believed by Her Britannic Majesty's Government to be true and correct:—*

"My Lord,

"Brest, September 22, 1871.

"I have the honour to acknowledge the receipt of your Lordship's despatch of the 12th instant, instructing me to furnish you with a Report containing all the particulars of which I could obtain information respecting the proceedings at this port of the Confederate cruiser Florida, in 1863-64.

"In obedience to your Lordship's commands I have now the honour to report that the Florida arrived in Brest Bay at 11 o'clock on the morning of the 23rd of August, 1863; and her Commander having declared that she entered the port in order that her engines and copper sheathing might be repaired, and for purposes of general refitting, she obtained free pratique on the evening of the following day.

"Captain Maffit, the Commander of the Florida, was informed by the Admiral of the Port (Prefet Maritime), Vice-Admiral Count de Gueyton, that he was at liberty to effect the repairs of the ship and provide her with coal and provisions, the same as any merchant-ship.

"Captain Maffit then selected as his agents Messrs. Massurier and Sons; but to this selection an objection was raised by Count de Gueyton, on account of their not being sworn brokers; and, at his suggestion, M. Aumaire, sworn broker and interpreter, was appointed agent.

"Later, a M. Imonet du Belley arrived from Paris as the special agent of the Confederate States for France. He, however, did not remain here long, but confirmed the appointment of M. Aumaire.

"The commercial resources of Brest proving insufficient to effect the repairs of the Florida, application was made to the Port Admiral to allow her to enter the Government dockyard, and permission for her to do so was granted, it being stipulated that all expenses should be reimbursed by the agent, M. Aumaire, and that her powder-magazine should be cleared before entering the dock. To effect the latter operation, a Government barge was furnished for the purpose of removing the munition; and this barge was, later, moored in the bay.

"On the 9th of September, 1863, the Florida entered the Government dock, and remained there for general repairs for a period of about five weeks.

"On the 17th of the same month the Federal corvette Kearsarge put into Brest for a supply of coal; but this appears simply to have been a pretext, as she took but a small quantity on board. She, however, remained at anchor in the bay, with fires banked, until the 30th of October, when she proceeded to sea, Queenstown being reported as her destination.

"The Federal corvette, however, returned to her anchorage at Brest on the 27th of November, and remained there until the 4th of December, when she again left Brest, and cruised off Cherbourg until, as I am informed, her Commander ascertained that the Confederate vessel Georgia, then repairing at that port, would not be ready for sea for some time; whereupon the Kearsarge returned to Brest Bay, and anchored there on the 11th of the same month.

"Meanwhile the Florida had completed her repairs in the dockyard, and afterwards took moorings

* Appendix, vol. I, p. 126.

in the merchant harbour of Brest, where she was slowly refitted. On the 27th of December she was moved to the roadstead, and there anchored within half a mile of the Kearsarge.

" At half-past 1 o'clock on the afternoon of the 29th of December the Kearsarge again left Brest for an unknown destination.

" It appears that some of the mechanism of the more heavy guns of the Florida had never been regulated, and her Commander desiring to have this done, an application was made to the Port Admiral for permission to land the guns for that purpose; but this was at once and positively refused, on the ground that such an act might be interpreted as an equivalent to allowing a reinforcement of arms.

" But, it appears, her small-arms were allowed to be landed, in order to be repaired by a gunmaker, of Brest, named Koch; this permission was granted, on the agent, M. Aumaitre, giving a guarantee to the authorities of the Custom-house that they should be reshipped on board the Florida.

" No arms or ammunition were furnished to the Florida while here.

" Through M. Aumaitre, the agent, I have ascertained that thirty-five seamen claimed and obtained, their discharge from the Florida here; that they were, in part, replaced by others chiefly natives of Belgium, Germany, Italy, and Southern Austria, brought to Brest by railway direct from Paris, in numbers never exceeding four at a time, and that they were quietly sent on board in similar numbers.

" The Federal corvette Kearsarge reappeared in Brest waters on the 3rd of January, 1864; and, after steaming about the bay to within a mile of the town, again proceeded to sea.

" The Confederate cruiser Florida, being ready for sea, left Brest between 9 and 10 o'clock on the evening of the 9th of February, 1864, in charge of a pilot; and at a distance of about thirty miles from this port, passed through the dangerous passage Du Raz, inside the Saints, leading the pilot at Audierne.

" On the 18th of February, the Kearsarge coming from Cadiz, reappeared in Brest Roads; but her Commander, finding that the Florida had left, departed the following day for an unknown destination.

" During the stay of these two ships of war in the port of Brest, the French ship of the line Louis XIV, was placed in a position to watch their movements; the commanding officer having orders, in the event of one of these vessels quitting the port, to prevent the other from leaving until after the expiration of twenty-four hours.

" I am informed that the agent, M. Aumaitre, paid the authorities of the dockyard for repairs to the Florida, 135,000 francs, and that the total sum expended on her here exceeded 300,000 francs, which amounts were later reimbursed by Mr. Taylor, the Paymaster of the ship.

" The Florida, on her arrival at Brest, was commanded by Captain Maffit, who was later replaced by Captain Barney, who was again relieved by Captain Morris, under whose command she finally left this port.

" In conclusion, I beg leave to state, that your Lordship's despatch of the 12th instant, calling for this Report, having been received by Captain Clipperton, then Acting Consul, the day before I took charge of the Consulate, he had already collected valuable information on the subject to which it refers; and I am, therefore, indebted to him for a portion of that furnished in the present despatch. I would, however, add that, before availing myself of such information, I had it verified by persons competent to do so.

" I have, &c.
(Signed) " HARRY RAINALS."

The United States' Minister at Paris, Mr. Dayton, addressed several remonstrances to the French Government against the facilities afforded at Brest to the Florida, but without success. An account of these remonstrances and the answers given to them was furnished by him to his Government, and is contained in the following extracts from his despatches, published by order of the Government of the United States:—

" I have this day sent out a note to the Minister, informing him that I had learned that the Florida had come into Brest, not for repairs of machinery only, but for coal, which had been denied to her at Bermuda, from which port she had come. The fact is, that as she is a good sailing vessel, and has crossed the Atlantic, as I believe, principally by that means, neither coal nor machinery is necessary to her safety, although a great convenience, doubtless, in enabling her to prey upon our commerce. It may well be doubted whether the rule which limits aid in such cases, to what is called for by necessity and humanity, applies at all to her case."—*Mr. Dayton to Mr. Seward*, 25th August, 1863.

" I have to-day had a conversation with M. Drouyn de l'Hays upon the subject. He says they are much annoyed that the Florida should have come into a French port. But having recognized the South as belligerents, they can only deal with the vessel as they would deal with one of our ships of war under like circumstances. They will give her so much aid as may be essential to her navigation, though they will not provide her with anything for war. I stated that she was a good sailor, and really needed nothing in the shape of repairs to machinery, &c., to enable her to navigate. He said that if she were deprived of her machinery, she would be *pro tanto* disabled, crippled, and liable, like a duck with its wings cut, to be at once caught by our steamers. He said it would be no fair answer to say the duck had legs, and could walk or swim. But he said that, in addition to this, the officers of the port had reported to the Government that the vessel was leaking badly; that she made water at so much per hour (given the measurement), and unless repaired she would sink; that this fact, coming from their own officers, he must receive as true. They said nothing, however, about her copper being slaveraged, but reported that she needed caulking and tarring, if I understood the French word rightly. I then asked him if he understood that the rule in such cases required or justified the grant of a Govern-

Part V.

The Floridas.

ment dock or basin for such repairs, especially to a vessel like this, fresh from her destructive work in the Channel; remarking that, as she waited no judicial condemnation of her prizes, when repaired in this Government dock, she would be just at hand to burn other American ships entering or leaving Havre and other French ports. He said where there was no mere commercial dock, as at Brest, it was customary to grant the use of any accommodations there to all vessels in distress, upon the payment of certain known and fixed rates; that they must deal with this vessel as they would with one of our own ships, or the ships of any other nation, and that to all such these accommodations would be granted at once."—*The same to the same, 3rd September, 1863.*

* On the 19th instant I received a note from M. Drouyn de l'Huys requesting to see me on the next day (yesterday) in reference to certain matters of business. I, of course, attended at the Foreign Office at the time named. He then informed me that it had been reported to him that the United States' steam-ship Kearsarge, Captain Winslow, now in the port of Brest, kept her steam constantly up with the view, as supposed, of instantly following and catching, if possible, the Florida upon her leaving that port; and that France, having resolved to treat this vessel as a regularly commissioned ship-of-war, could not and would not permit this to be done. He said that the rule which requires that the vessel first leaving shall have twenty-four hours the start must be applied. To avoid the difficulty which he said must inevitably follow a disregard of this rule by Captain Winslow, he requested me to communicate to him the determination of this Government, and apprise him of the necessity of complying with the rule. Inasmuch as nothing was to be gained by inviting the application of force, and increased difficulties might follow that course, I have communicated to Captain Winslow the letter of which I herewith send you a copy.

* M. Drouyn de l'Huys furthermore informed me that this Government, after much conference (and, I think, some hesitation), had concluded not to issue an order prohibiting an accession to the crew of the Florida while in port, inasmuch as such accession was necessary to her navigation. They had made inquiries, it would seem, and said they had ascertained that the seventy or seventy-five men discharged after she came into Brest were discharged because the period for which they had shipped had expired. He said, furthermore, that it was reported to him that the Kearsarge had likewise applied for some sailors and a pilot in that port, as well as for coal and leave to make repairs, all of which had been, and would be, if more were needed, cheerfully granted.

* I told him I was quite confident the Kearsarge had made no attempt to ship a crew there, and that as respects a pilot, that stood on ground peculiar to itself, and had no reference to the general principle.

* The determination which has been reached by the French authorities to allow the shipment of a crew, or so large a portion of one, on board of the Florida while lying in their port, is, I think, wrong, even supposing that vessel a regularly commissioned ship of war. I told M. Drouyn de l'Huys that, looking at it as a mere lawyer, and clear of prejudices which my official position might create, I thought this determination an error. He said, however, that in the conference they had reached that conclusion unanimously, although a majority of the Ministry considering the question were lawyers."—*The same to the same, 21st October, 1863.*

The Florida remained in the harbour of Brest, repairing and refitting, during nearly six months, from the 23rd August, 1863, till the 9th February, 1864.

On the 13th April, 1864, the Florida touched at Bermuda, but remained only a very short time, anchoring on the afternoon of that day and putting to sea the same evening.

On the 18th June, 1864, she again arrived at Bermuda, and obtained permission to remain during five days for the purpose of making necessary repairs. The circumstances which occurred, and the course pursued by the authorities at Bermuda, are set forth in the subjoined despatch from the Acting Governor:—*

* Sir,

* I have the honour to report the following particulars connected with a recent visit to these islands of the Confederate States' steamer Florida. On Saturday the 18th June, the Florida arrived at the outer anchorage, and Commander Morris sent one of his officers to report his arrival and ask permission to take in coal, and permission also to effect some repairs. I was informed that no supplies or coal had been furnished to the Florida in any English port for ten months past, and that it would not be possible to ascertain the full extent of the repairs necessary until the vessel came into port. I then gave permission for the Florida to be brought into St. George's Harbour for twenty-four hours, exclusive of Sunday; the vessel came in accordingly on Sunday, and, shortly after his arrival, Commander Morris waited upon me and delivered me a letter asking that the repairs which were found necessary might be carried out at Her Majesty's Dockyard. I immediately transmitted this letter to Vice-Admiral Sir James Hope, who declined to allow any repairs to be carried out in the dockyard, but offered to send competent officers on board the Florida to ascertain the extent of the repairs necessary. Commander Morris was very glad to obtain the opinion of these officers, and the knowledge [was necessary to me, in order that I might judge what time should be granted. The Admiral sent the Flag Lieutenant, Chief Engineer, and two Assistant Engineers on board the Florida, and they reported on the vessel.

* 1st. 'She can proceed to sea with such repairs as can be made good here, which, as far as we are able to judge, will require five days for one man, viz., a diver for two days and a fitter for three days, or three complete days in all.'

* 2nd. 'She can proceed to sea with safety in her present state number stumps, but under sail

is unmanageable with her screw up in bad weather, and her defects aloft (cross-trees) render main top-mast unsafe. This could be made good in two days."

"I consulted personally with Sir James Hope, and gave Commander Morris permission to remain five working days in St. George's to complete the repairs. I also furnished Commander Morris with printed extracts of some portion of the Circular despatch dated the 16th July, 1863, informing him of the regulations under which alone he could be allowed to take in coal. He asserted that Mobile was the first Confederate port he expected to visit, and reports that he took in about eighty tons of coal. The five working days expired on the 27th June, and the Florida quitted St. George's Harbour on that day, but was seen off the island on the following day and also on the morning of the 29th. I had the advantage of the advice of Sir James Hope until he quitted Bermuda in the Duncan for Halifax, and our views were completely in accord. During this visit the conduct and demeanour of Commander Morris were all that I could wish, and he appeared very desirous to avoid the least infringement of the instructions laid down in Her Majesty's Proclamation. Since that time, however, I cannot think Commander Morris has behaved quite properly. On the 28th June the Florida was seen off the islands all day, and also on the morning of the 29th. Again she was signalled off the south side on the 2nd July, about 7:30 A.M., and on the afternoon, about 4 P.M. I received a verbal message to say that two men, supposed to be deserters, had been found on board, and requested that I would send some persons off to identify them in steam-tug that was going off to visit the Florida. The departure of this tug was delayed until after sunset, and the Fort Adjutant then perceived that she was going to tow out a barge full of coal. This officer immediately told Mr. Black, who is temporarily acting as agent for the Confederate States, that he ought not to take out coal without the Governor's permission. Mr. Black then sent me a note, of which I inclose a copy, asking for permission to take out fifteen tons of coal to the Florida in consequence of her having returned to Bermuda for the purpose of bringing back the two deserters. To this I immediately replied that I could not sanction any further issue of coal. The Fort Adjutant was present when my letter was delivered to Mr. Black, and at that moment the tug-steamer started off to the Florida with the barge in tow. Mr. Black stated that she had gone without his orders, and that he would follow her in a gig. This he did, and I am informed that about half the coal had been already taken on board before Mr. Black had arrived in the gig, and the remainder was brought back. The deserter belonging to the Royal Engineers was placed on board and handed over. It will be observed in Mr. Black's note that he stated the deserters were discovered in twenty-four hours. The Florida remained in sight for at least thirty-six hours after her departure, and the deserter was not landed for five days.

"Commander Morris never applied to me for permission to take the coal, I suppose, being fully aware that the Circular despatch of the 16th July, 1863, prohibited coal being supplied to vessels such as his, which 'had consumed their fuel in cruising' as he had done in sight of these islands.

"Mr. Black, who belongs to the Southern States, states that he sent the coal at the request of Commander Morris. The Florida then immediately left the islands, and has not since been seen.

"I beg to annex a copy of a printed extract from the Circular despatch of the 16th July, 1863, which I forwarded to Commander Morris.

"I have, &c.
(Signed) "WILLIAM MURDO."

With reference to these circumstances the following correspondence passed between Mr. Adams and Earl Russell:—*

Mr. Adams to Earl Russell.

"My Lord,

"Legation of the United States, London, August 19, 1864.

"It is with very great regret that I find myself compelled to call the attention of your Lordship to the abuse made of the neutrality of the Island of Bermuda by the vessels under the direction of the insurgents in the United States, in making it a base for hostile operations against the commerce of a friendly nation. I have the honour to submit to your consideration the copy of an extract from a Report of Mr. Allen, Consul of the United States at that place, to the Secretary of State, in which he makes certain statements respecting the reception there of the gun-boat known under the name of the Florida, and her subsequent proceedings, which appear to be directly in violation of the regulations heretofore laid down by Her Majesty's Government. I beg permission to remind your Lordship of the remonstrances which were promptly made, a short time since, in the case of one of the vessels of the United States, for proceedings of a far less excusable character.

"Not doubting the disposition of Her Majesty's Government to do full justice in the premises, I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

Inclosure.

Mr. Allen to Mr. Seward.

"Sir,

"United States' Consulate at Bermuda, June 30, 1864.

"The Florida, after remaining in port nine days, went to sea last Monday evening, but has not been far from land. She is in sight to day from the hills, about six miles off. She boards all vessels

* Appendix, vol. i, p. 184.

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approaching these islands. She received all the coal and supplies they wanted. The coal was taken from the ship *Storm King*, C. L. Hobson, of Richmond, agent.

"I am, &c.

(Signed) "C. M. ALLEN, Consul."

Earl Russell to Mr. Adams.

"Sir,

"In reply to your note of the 19th ultimo respecting the proceedings of the Florida at Bermuda, I have the honour to inform you that Her Majesty's Government have received reports on the same subject from Her Majesty's Colonial and Naval authorities, and that, after due consideration of the same, they are of opinion that although some disposition was manifested by the Commander of the Florida to evade the stringency of Her Majesty's Regulations, the most commendable strictness and diligence in enforcing those Regulations was observed on the part of the authorities, and that no substantial deviation, either from the letter or from the spirit of those Regulations was permitted to, or did, take place.

"I have further the honour to inform you that Her Majesty's Government consider that the conduct of the Lieutenant-Governor of Bermuda on the occasion in question was perfectly proper.

"I am, &c.

(Signed) "RUSSELL."

On or about the 5th October, 1864, the Florida entered the port of Bahia. On this occasion the following correspondence passed between the United States' Consul at that place and the President of the Province of Bahia:—*

The United States' Consul to the President of the Province.

"To his Excellency Antonio Joaquim da Silva Gomes, President of the Province of Bahia.

"Consulate of the United States of America, Bahia,

"October 5, 1864, 9 A.M.

"Sir, "This morning a steamer anchored in this port bearing the flag adopted by those who are involved in the rebellion against the Government of the United States of America, and I am informed that the said vessel is the Florida, which is engaged in capturing vessels navigating under the flag of the United States of America, and in destroying them by marking bonfires of them and their cargoes.

"The vessel in question is not commissioned by any recognized Government whatever, and her officers and crew are composed of persons of various nationalities, who are not subject to any international or civilized law, and are consequently not entitled to the privileges and immunities conceded to vessels navigating under the flag of a civilized nation. I therefore protest, in the name of the United States of America, against the admission of this vessel to free practice, by which she might be enabled to supply herself with coal, provisions, tackle, or utensils of any kind whatever, or receive on board any persons whatever; finally, against any assistance, aid, or protection might be conceded to her in this port, or in any other belonging to this province.

"I likewise claim that the piratical cruiser which, in combination with the pirate Alabama, violated the sovereignty of the Imperial Government of Brazil, by capturing and destroying vessels belonging to citizens of the United States of America, within the territorial waters of Brazil, near the island of Fernando de Noronha, in April 1863, be detained with all her officers and crew, in order to answer for so flagrant a violation of the sovereignty of the Government of Brazil and of the rights of citizens of the United States within the jurisdiction of the Brazilian Government.

"I avail, &c.

(Signed) "THOMAS F. WILSON, Consul of the United States."

The President of the Province to Mr. Wilson.

"Palace of the Government of the Province of Bahia,

"October 5, 1864.

"In a Note, dated this day, Mr. Thomas F. Wilson, Consul of the United States, claims that the steamer Florida, now anchored in this port, shall not be admitted to free pratique, nor obtain permission to provide herself with coal, provisions, supplies, and utensils of any kind whatever, nor receive on board any person whatever; he likewise requests that, as the cruiser, in combination with the Alabama, violated the sovereignty of the Imperial Government of Brazil, by capturing and destroying vessels belonging to citizens of the United States of America, within the territorial waters of the Empire, near the island of Fernando de Noronha, in April 1863, she may be detained, with all her officers and crew, in order to answer for this flagrant violation of the sovereignty of the Government of Brazil and of the rights of citizens of the United States, within the jurisdiction of the Brazilian Government.

"In reply to the Consul, I have to inform him that, as the said vessel belongs to the Confederate States, in whom the Imperial Government recognized the character of belligerents, all the assistance

* Extracted from the "World" (American journal) of December 2, 1864. (See Appendix, vol. I, p. 146.)

required by humanity may be furnished her, which does in no wise constitute assistance for warlike purposes, as laid down by international law, and does not conflict with that neutrality which this Government studiously seeks to preserve, and has always preserved, in the contest between the States of North America. The Undersigned cannot, therefore, admit the first portion of the claim of the Consul, in the general manner in which it was presented, and particularly in relation to those articles considered as contraband of war, in conformity with instructions issued on that subject by the Imperial Government, and according to which the said vessel will only be permitted to remain in this port for the length of time absolutely indispensable.

"In regard to the second part of his Note, it is my duty to observe to the Consul that, even if it were fully established that the Florida had previously violated neutrality, such a proceeding would scarcely authorize us to refuse her permission to enter the ports of the Empire, and would never warrant us to commit the acts required by the Consul, which would be equivalent to a hostile rupture, without the intervention of the supreme Government of the State, which is alone competent to authorize such a rupture.

"I renew, &c.

(Signed) "ANTONIO JOAQUEM DA SILVA GOMES.

"To Mr. Thomas F. Wilson, Consul of the United States."

Before dawn on the morning of the 7th October, 1864, the Florida was surprised and captured in the port of Bahia by the United States' war-steamer Wachusett, and was carried as a prize to the United States. Shortly after her arrival she sank in Chesapeake Bay, in consequence, as was affirmed, of having sprung a leak during her voyage and of having been injured whilst at anchor by a United States' transport-steamer.

The Government of Brazil protested immediately, in strong terms, against this violation of its sovereignty and of the neutrality of the port; and the United States' Minister at Rio declared, in reply, that the capture of the Florida had not been directed or authorized by himself, condemned the act of the Captain of the Wachusett, and promised that reparation should be made.

Mr. Seward, on learning what had occurred, wrote as follows to the United States' Minister at Rio:—*

Mr. Seward to Mr. Webb.

"Sir,

"In the years 1862 and 1863, remonstrances were addressed by us to the Government of Brazil against the policy, different as it was from that of all other American States, in regard to the furnishing of shelter and a haven to pirates who were engaged in depredating upon the peaceful commerce of the United States. The correspondence came to a close without having produced any satisfactory result, and not without leaving a painful presentiment that a continuance of measures so injurious to the United States would sooner or later affect the harmonious relations heretofore existing between the two countries.

"We have just now heard of the capture of the Florida by the Wachusett, at Bahia, and of the consequent hostilities adopted by the Brazilian forces in that port; but we have no particular information of the circumstances which preceded the collision, and our information concerning the transaction itself is incomplete. At the same time, we are absolutely without knowledge of any correspondence that it may have elicited between yourself and the Brazilian Government.

"In this stage of the matter, the President thinks it proper that you should inform the Minister of Foreign Affairs that we are not indisposed to examine the subject upon its merits carefully, and to consider whatever questions may arise out of it, in a becoming and friendly spirit, if that spirit shall be adopted by His Imperial Majesty's Government.

"I am, &c.

(Signed) "WILLIAM H. SEWARD."

With reference to this occurrence, the following correspondence passed between the Brazilian Minister at Washington and the United States' Secretary of State:—†

Imperial Legation of Brazil, Washington,

"December 12, 1864.

(Translation.)

"The Undersigned, Chargé d'Affaires *ad interim* of His Majesty the Emperor of Brazil, has just received orders from his Government to address himself, without delay, to that of the United States of North America about an act of the most transcendent gravity done on the morning of the 7th day of October last, in the port of the capital of the Province of Bahia, by the war-steamer Wachusett, belonging to the navy of the Union, an act which involves a manifest violation of the territorial jurisdiction of the Empire, and an offence to its honour and sovereignty.

"On the 4th day of the month referred to, there entered that port, where already had been lying for some days the Wachusett, the Confederate steamer Florida, for the purpose, declared by her Commander to the President of the province, to supply herself with alimentary provisions and coal, and to repair some tubes of her machinery.

* Appendix, vol. i, p. 152.

† Ibid., p. 153.

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" The President, proceeding in accordance with the policy of neutrality which the Empire resolved to adopt on the question in which unfortunately these States are involved, and, in conformity with the instructions in this respect issued by the Imperial Government on the 23rd of June of the year last past, assented to the application of the Commander of the Florida, and fixed the term of forty-eight hours for taking in supplies, and fixing, in dependence on the final examination by the Engineer of the Arsenal, the determination of the residue of the time which, peradventure, should be deemed indispensable for the completion of the repairs.

" The same authority at once took, with the greatest impartiality, all the measures necessary to avoid any conflict between the two hostile steamers.

" The Florida was placed under cover of the batteries of the Brazilian corvette D. Januaria, on the inshore side, at the request of her Commander, who, reposing on the faith with which, without doubt, the chief authority of the province could not fail to inspire him, considered himself sheltered from any attack of his adversary, and in this confidence not only stayed a night on shore, but gave liberty to a great part of the crew of his vessel.

" It behoves me to say that, as soon as the Confederate steamer entered the port at Bahia, the American Consul, Wilson, addressed to the President a despatch claiming that the Florida should not be admitted to free pratique, and that on the contrary she should be detained, alleging for this, that that vessel had, in concert with the Alabama, violated the neutrality of the Empire by making captures in 1863, near the Island of Fernando de Noronha.

" Such exaggerated pretensions, founded on facts not proven, which had already been the subject of discussion between the Imperial Government and the Legation of the United States, could not be even listened to.

" If the President should have refused the hospitality solicited by the Commander of the Florida, he would have infringed not only the duties of neutrality of the Empire, but also those of humanity, considering that steamer, coming from Teneriffe, had been sixty-one days at sea, was unprovided with food, and with machinery in the worst condition.

" Afterwards, the President having stated to the same Consul that he hoped, from his honour and loyalty toward a friendly nation, that he would settle with the Commander of the Wachusett that he should respect the neutrality and sovereignty of the Empire, he was answered affirmatively, the Consul pledging his word of honour. Things were in this condition, the term of forty-eight hours being to expire at 1 o'clock of the afternoon of the 7th, when about dawn of that day, the Commander of the steamer Wachusett, suddenly leaving his anchorage, passed through the Brazilian vessels of war and approached the Florida.

" On passing across the bows of the Brazilian corvette D. Januaria, he was hailed from on board that he hauled anchor; but, as he did not attend to this intimation, and continued to approach the Florida, at the same time firing a gun and some musketry, the Commander of the Naval Division of the Empire stationed in those waters sent an officer to board the Wachusett and inform her commander that the ships of the division and the forts would open fire upon her if she should attack the Florida. The Brazilian officer was not allowed to make fast to the Wachusett, but the officer of the deck hauled him, saying in reply that he accepted the intimation given, that he would do nothing more, and that he was going to return to his anchorage. The Commander of the Brazilian division then thought proper to ratify his intimation by firing a gun, upon which a complete silence followed between the two ships Wachusett and Florida.

" At the time this was passing, the corvette D. Januaria, on board which the Commander of Division had hoisted his flag, lay head to flood, the steamer Florida anchored E.E., side by side of her, and quite close to the shore, and between her and the corvette the Wachusett stopped her wheels.

" The Commander of Division then observing—notwithstanding the darkness of the night—that the Wachusett, from the position in which she was, kept moving onward and was passing ahead of the corvette, in a course E.B., became convinced that, in fact, she was steering for her anchorage, thus complying with the promise made.

" But a few moments afterwards, perceiving that the Florida was in motion, the Commander discovered that the Wachusett was taking her off in tow by means of a long cable.

" Surprised at such an extraordinary attempt, the Commander immediately set about stopping this, and redressing, at the same time, as behoved him, the offence thus done to the dignity and sovereignty of the Empire.

" But availing himself of the darkness of the night, and of other circumstances, the Commander of the Wachusett succeeded in carrying his prize over the bar, and escaping the just punishment he deserved.

" The Consul, Wilson, preferred to abandon his post, withdrawing on board the Wachusett.

" The Government of His Majesty, as soon as it had official information of the event, addressed to the Legation of the United States at Rio Janeiro a note, in which, giving a succinct exposition of the fact, it declared that it had no hesitation in believing it would hasten to give to it all proper assurances that the Government of the Union would attend to the just reclamation of the Empire as promptly and fully as the gravity of the case demanded.

" In correspondence with this expectative note the worthy Representative of the United States was prompt in sending his reply, in which he declares he is convinced that his Government will give to that of the Empire the reparation which is due to it.

" Such are the facts to which the Undersigned has received order to call all the attention of the Honourable William H. Seward, Secretary of State of the United States.

" The principles of international law which regulate this matter, and in respect of which there is not the least divergence among the most distinguished publicists, are common and known to all. The Undersigned would fail to recognize the high intelligence of the Honourable Mr. Seward, if, perchance, he should enter in this respect into fuller developments.

" He limits himself then only to recall a memorable example, in which these principles, invariably

sustained by the United States, had entire application. In 1793, the great Washington then being President of the United States, and the illustrious Jefferson Secretary of State, the French frigate *l'Endeavour* captured the English ship *Grange*, in Delaware Bay, thus violating the neutrality and the territorial sovereignty of the United States. The American Government remonstrated energetically against this violation, and required from the Government of the French Republic not only the immediate delivery of the captured vessel, but also the complete liberation of all the persons found on board. This remonstrance was promptly satisfied. Much more grave, certainly, is the occurrence in the port of the province of Bahia, which makes the subject of the present note. By the special circumstances which preceded and attended it, this act has no parallel in the annals of modern maritime war.

"The Commander of the *Wachinsett* not only gravely offended the territorial humanities of the Empire, passing beyond the laws of war by attacking treacherously, during the night, a defenceless ship, whose crew, much reduced, because more than sixty men were on shore with the Commander and several officers, reposed unwary beneath the shadow of the protection which the neutrality of the Empire guaranteed to them; and so open was the violation, so manifest the offence, that the enlightened American press was almost unanimous in condemnation of the inexcusable proceeding of Commander Collins.

"On this occasion, remembering the United States, whose antecedents are well known and noted in history by the energetic defence of and respect for neutral rights, of these unshaken principles, the Undersigned cannot consider the event which occurred at Bahia otherwise than as the individual act of the Commander of the *Wachinsett*, not authorized or approved by his Government, and that it will consequently give to the Government of His Majesty the Emperor the explanations and reparation which, in conformity with international laws, are due to a Power which maintains friendly and pacific relations with the United States.

"The just reclamation of the Imperial Government being thus presented, the Undersigned awaits the reply of the Honourable Mr. Seward, and, fully confiding in his exalted wisdom, and in the justice of the Government of the United States, he has not even for a moment doubted but that it will be as satisfactory as the incontestable right which aids the Empire, and the vast gravity of the offence which was done to it, may require.

"The Undersigned, &c.

(Signed)

"IGNACIO DE AVELLAK BARBOZA DA SILVA.

"His Excellency the Hon. William H. Seward."

Mr. Seward to Mr. Barberon.

"Sir,

"Department of State, Washington, December 20, 1864.

"I have the honour to acknowledge the receipt of your note, which sets forth the sentiments of the Imperial Government of Brazil concerning the capture of the Florida by the United States' war-steamer *Wachinsett* in the port of Bahia.

"You will, of course, explain to your Government that, owing to an understanding between you and myself, your note, although it bears the date of the 12th December, was not submitted to me until the 21st instant.

"Jealousy of foreign intervention in every form, and absolute non-intervention in the domestic affairs of foreign nations, are cardinal principles in the policy of the United States. You, have, therefore, justly expected that the President would disavow and regret the proceedings at Bahia. He will suspend Captain Collins, and direct him to appear before a court-martial. The Consul at Bahia admits that he advised and incited the captain, and was active in the proceedings. He will therefore be dismissed. The flag of Brazil will receive from the United States' Navy the honour customary in the intercourse of friendly maritime Powers.

"It is, however, not to be understood that this Government admits or gives credit to the charges of falsehood, treachery, and deception which you have brought against the captain and the Consul. These charges are denied on the authority of the officers accused.

"You will also be pleased to understand that the answer now given to your representation rests exclusively upon the ground that the capture of the Florida was an unauthorized, unlawful, and indefensible exercise of the naval force of the United States within a foreign country, in defiance of its established and duly recognized Government.

"This Government disallows your assumption that the insurgents of this country are a lawful naval belligerent; and, on the contrary, it maintains that the ascription of that character by the Government of Brazil to insurgent citizens of the United States, who have hitherto been, and who still are, destitute of naval forces, ports, and Courts, is an act of intervention, in derogation of the law of nations, and unfriendly and wrongful, as it is manifestly injurious, to the United States.

"So, also, this Government disallows your assumption that the Florida belonged to the aforementioned insurgents, and maintains, on the contrary, that that vessel, like the *Alabama*, was a pirate, belonging to no nation or lawful belligerent, and therefore that the harbouring and supplying of these piratical ships and their crews in Brazilian ports were wrong and injuries for which Brazil justly owes reparation to the United States, as ample as the reparation which she now receives from them. They hope, and confidently expect, this reciprocity in good time, to restore the harmony and friendship which are so essential to the welfare and safety of the two countries.

"In the positions which I have thus assumed, the Imperial Government will recognize an adherence to rights which have been constantly asserted, and an enduring sense of injuries which have been the subject of earnest remonstrance by the United States during the last three years. The Government of Brazil is again informed that these positions of this Government are no longer deemed open to argument.

"It does not, however, belong to the captains of ships of war of the United States, or to the

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commanders of their armies, or to their Consuls residing in foreign ports, acting without the authority of Congress, and without even Executive direction, and choosing their own time, manner, and occasion to assert the rights and redress the wrongs of the country. This power can be lawfully exercised only by the Government of the United States. As a member of the family of nations, the United States' practise order, not anarchy, as they always prefer lawful proceedings to aggressive violence or retaliation. The United States are happy in being able to believe that Brazil entertains the same sentiments. The authorities at Bahia are understood to have unsuccessfully employed force to overcome the Wachusett and rescue the Florida, and to have continued the chase of the offender beyond the waters of Brazil, out upon the high seas. Thus, in the affair at Bahia, subordinate agents, without the knowledge of their respective Governments, mutually inaugurated an unauthorized, irregular, and unlawful war. In desisting from that war on her part, and in appealing to this Government for redress, Brazil rightly appreciated the character of the United States, and set an example worthy of emulation.

" The disposition of the captured crew of the Florida is determined upon the principles which I have laid down. Although the crew are enemies of the United States, and, as they contend, enemies of the human race, yet the offenders were, nevertheless, unlawfully brought into the custody of this Government, and therefore they could not lawfully be subjected here to the punishment which they have deserved. Nor could they, being enemies, be allowed to enjoy the protection of the United States. They will, therefore, be set at liberty, to seek a refuge wheresoever they may find it, with the hazard of retribution when beyond the jurisdiction of this Government.

" The Florida was brought into American waters, and was anchored, under naval surveillance and protection, at Hampton Roads. While awaiting the representation of the Brazilian Government, on the 28th November, she sunk, owing to a leak which could not be seasonably stopped. The leak was at first represented to have been caused, or at least increased, by a collision with a war transport. Orders were immediately given to ascertain the manner and circumstances of the occurrence. It seemed to affect the army and the navy. A Naval Court of Inquiry and also a Military Court of Inquiry were charged with the investigation. The Naval Court has submitted its Report, and a copy thereof is herewith communicated. The Military Court is yet engaged. So soon as its labours shall have ended, the result will be made known to your Government. In the meantime it is assumed that the loss of the Florida was a consequence of some unforeseen accident, which cast no responsibility upon the United States.

" I avail, &c.

(Signed)

" WILLIAM H. SEWARD."

" Senhor Ignacio de Avellar Barboza da Silva, &c."

It has been stated above that the crew of the Florida were shipped principally at Mobile. Representations having been made to Her Majesty's Government to the effect that some of the men who served in her were British subjects, the Law Officers of the Crown were consulted on the question whether proceedings could be instituted against these persons for an infringement of the Foreign Enlistment Act. The Law Officers advised us follows:—†

" We do not think that sufficient evidence has yet been obtained to warrant the institution of proceedings against any of these seamen.

" If it were shown that their enlistment on board the Florida had taken place in England, or within British jurisdiction, they might perhaps have been presumed to be natural-born British subjects, owing obedience at that time to British law; so far, at all events, as to make slight evidence, in confirmation of that presumption, sufficient.

" Next it appears, by the fourth column of the list annexed to Thomson's first affidavit, that, with two exceptions only, all these men took service on board the Florida beyond the limits of British jurisdiction, and by far the greater number of them at Mobile, within the territory of the Confederate States. With respect to the two, Dennis Sullivan and Charles Ballinger, who are alleged, the one to have enlisted at Nassau, and the other to have been shipped at the first (which we suppose means when the ship first sailed from England), no evidence whatever has yet been obtained in support of either of these allegations.

" In the former Report of the Law Officers upon this subject, it was noticed that the first section of the Foreign Enlistment Act, which prohibits the enlistment of British subjects in the belligerent service of any foreign Power, is not limited (as the 7th section as to equipping vessels is) to acts done within British jurisdiction; but that it seems to be intended to apply, and is in its literal terms applicable, to all natural-born British subjects who may enter into the service of any foreign belligerent Power without Her Majesty's license, wheresoever the prohibited act may be done. Assuming this to be the construction and effect of the statute, we apprehend that it would be impossible to procure a conviction under it, in the case of persons who were not resident within British jurisdiction at the time of their taking foreign service, without strict proof that such persons were in fact, at the time of their doing so, natural-born British subjects, owing exclusive obedience, wherever they might be, to the Statute Law of Great Britain; and we think it is at least very doubtful whether those sections of the statute would be held to be applicable to any persons who were naturalized, or even domiciled, at the time of their taking such service, within the territory of the belligerent Power in whose service they enlisted.

* These two letters, as well as the preceding one, are extracted from the "Daily Morning Chronicle" (American journal), of 31st December, 1864.

† Appendix, vol. i, p. 121.

" Bearing these considerations in mind, we turn to the original depositions of Thompson and Müller, and we find in the former no evidence whatever bearing upon the essential question of the nationality and origin of any of these seamen; while the statements of the latter, as to seventeen of the thirty-three persons who are described as of British origin in the second column of the lists, depend upon admissions or inferences of so loose a character that we do not think any reliance ought to be placed upon them. So far as they rest only on the deponent's belief, they are inadmissible: so far as they prove that certain individuals associated on board the ship as Irishmen, and sang Irish songs, &c., they are insufficient; and we think it would be unsafe to trust to the statements of this witness as to the admissions and to have been made by some of the parties (as we count them, by seven only, viz., Considine, Conway, Doris, McNevin, McCabe, McGarroch, and Welch), to the effect that Ireland was their home, their country, or the place of residence of their parents. Every one of these seven persons, it is to be remembered, joined the Florida, according to the lists, at Mobile; and it may serve as some test of the value of this kind of evidence, that the same witness makes very similar statements as to four other seamen (Taylor, Rivers, Grover, and King), with a view to prove them to be either Englishmen or Irishmen, although they are described as native Americans in the second column of the list referred to in his own affidavit.

"The opinion which we had formed, as above expressed, upon the perusal of the original depositions of Thompson and Müller is strongly confirmed by the subsequent affidavit of Thompson, who in that affidavit speaks of admissions made to him by eighteen of these seamen, to the effect that they were born in Ireland, Scotland, or England; and by six others, to the effect either that they were Irishmen, or that Ireland or Liverpool was their home.

" But of these twenty-four persons there are only seven on whose history any further light is thrown by these depositions, and every one of these seven appears to have emigrated from Great Britain or Ireland to the United States previous to the existing civil war, under circumstances from which it is *prudent* to infer that, at the time when he took service on board the *Florida*, he was either a naturalized or a domiciled American. Some of them appear to have resided for many years in the United States; and two (Good and Doris) are expressly stated to have acquired the rights of citizens there, and to have voted at presidential and other elections. With respect to the rest of the crew there is nothing whatever to show that they may not have enlisted under similar circumstances.

" As to all persons so situated, we think that it would be a reasonable construction of the Foreign Enlistment Act to hold that, although they are natural-born subjects of Her Majesty, the word 'foreign,' which pervades the first section of the statute, is not, as regards them, applicable to the service into which they have entered. And even assuming that this construction might not be admitted, we think that it would not be a proper exercise of discretion on the part of the Crown to attempt to put the statute in force, so far as relates to acts done by persons so situated beyond the limits of British jurisdiction, and within the territory in which such persons may have been naturalized or domiciled.

(Signed) " RODMELL PALMER.
" R. P. COLLIER.

"Lincoln's Inn, October 20, 1863."

Summary.

The Florida was a vessel built at Liverpool by a firm of shipbuilders there, to the order of another Liverpool firm carrying on an extensive business as engineers and ironfounders. She was stated to be ordered for and on account of a person resident at Liverpool, who was a partner in a mercantile house at Palermo, and upon the completion of the vessel this person was duly registered as her owner, on his own declaration. Her builders stated that, according to the best of their information, they believed her to be really destined for Palermo.

She was a vessel built for speed, and her internal fittings and arrangements were not such as are usual in vessels constructed to carry cargo, but were suitable to a ship of war. She was unarmed, however, and had on board no guns, carriages, ammunition, or other warlike stores of any kind.

No facts whatever proving, or tending to prove, that she was intended to cruise or carry on war against the United States, were ever, before the departure of the ship, communicated by Mr. Adams or Mr. Dudley to Her Majesty's Government. Mr. Adams alleged, indeed, that advances of money had been made to the firm which ordered the vessel, and to that which constructed her, by the firm of Fraser, Trenholm, and Co., who were believed to have been engaged in blockade-running, and to be employed as agents for the Government of the Confederate States; but this assertion, whether material or not, was not substantiated in any way. These were all the facts respecting the vessel which had been communicated to or were in the possession of Her Majesty's Government previously to and at the time of her departure from England.

It is certain that, had the vessel been seized by Her Majesty's Government, a Court of law would have ordered, and would indeed have been bound to order, the immediate restoration of her, for want of evidence to support a forfeiture. It was not the duty of Her Majesty's Government to seize a vessel which it would have been the duty of a Court of law to restore.

The means and opportunities possessed by Mr. Adams and Mr. Dudley of ascertaining

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the truth were fully as great as those possessed by Her Majesty's Government. They were, indeed, greater; since Mr. Dundley was the United States' Consul on the spot, in constant communication with Americans of all classes, always on the watch for information, and provided with means of gaining it which could not have been employed by Her Majesty's Government.

The vessel sailed from Liverpool with a clearance for Palermo and Jannien, unarmed, and with no warlike stores of any kind, under the command of a master belonging to the British mercantile marine, and manned by a crew who were not enlisted for the Confederate service and had no thought or intention of engaging in it, and who afterwards left the ship as soon as they conceived a suspicion that she might be employed in that service.

Although no directions, nor any notice or warning, had or could have been sent to the authorities of Nassau before her arrival there, the vessel was, upon her arrival and whilst she remained there, strictly watched by order of the Governor; a ship of war was placed near to her; she was finally seized by order of the Governor; and proceedings were instituted against her in the proper Court of the Colony. On being released by the Decree of the Court, she sailed from Nassau unarmed, and with a clearance for New Brunswick.

Before committing any hostilities against vessels of citizens of the United States, she sailed for and entered a port of the Confederate States, where she remained during more than four months and was put in condition for war, and enlisted a crew, and from whence she was finally sent out to cruise.

She was commissioned as a ship of war of the Confederate States, and was commanded by an officer commissioned by the *de facto* Government of those States. She was received on the footing of a public ship of war in the ports of neutral nations—Spain, France, and Brazil; and on the same footing, and in the same manner, without favour or partiality, she was received likewise in those ports of the British Colonies which she had occasion to enter.

The United States' ships of war blockading the port of Mobile failed to capture the Florida when she entered it, under circumstances which made the capture so easy of accomplishment, that the officer to whose incapacity the failure was due was dismissed the service. They again failed to capture her when she left the port to commence her cruise. From that time, until her unlawful seizure in the port of Bahia, she was, for a year and nine months, engaged in cruising, sometimes near the coast of the United States. It does not appear, however, that during all that period she was ever encountered or chased by a United States' ship of war. No serious endeavour, indeed, to intercept or capture her appears to have been made on the part of the Government of the United States.

Her Britannic Majesty's Government cannot admit that, in respect of the Florida, it is justly chargeable with any failure of international duty for which Great Britain owes reparation to the United States.

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Statement of Facts relative to the Alabama.

On the 24th June, 1862, Earl Russell received from Mr. Adams the following Note, with an inclosure :—*

Mr. Adams to Earl Russell.

" My Lord,

" Some time since it may be recollect by your Lordship that I felt it my duty to make a representation touching the equipment from the port of Liverpool of the gun-boat *Oreto* with the intent to make war upon the United States. Notwithstanding the statements returned from the authorities of that place, with which your Lordship favoured me in reply, touching a different destination of that vessel, I have the strongest reason for believing that that vessel went directly to Nassau, and that she has been there engaged in completing her armament, provisioning, and crew for the object first indicated by me.

" I am now under the painful necessity of apprising your Lordship that a new and still more powerful war steamer is nearly ready for departure from the port of Liverpool on the same errand. This vessel has been built and launched from the dockyard of persons, one of whom is now sitting as a Member of the House of Commons, and is fitting out for the especial and manifest object of carrying on hostilities by sea. It is about to be commanded by one of the insurgent agents, the same who sailed in the *Oreto*. The parties engaged in the enterprise are persons well known at Liverpool to be agents and officers of the insurgents in the United States, the nature and extent of whose labours are well explained in the copy of an intercepted letter of one of them which I received from my Government some days ago, and which I had the honour to place in your Lordship's hands on Thursday last.

" I now ask permission to transmit, for your consideration, a letter addressed to me by the Consul of the United States of Liverpool, in confirmation of the statements here submitted, and to solicit such action as may tend either to stop the projected expedition, or to establish the fact that its purpose is not inimical to the people of the United States.

" Renewing, &c.
(Signed) " CHARLES FRANCIS ADAMS."

The "copy of an intercepted letter" referred to in the above Note, was a paper purporting to be a copy of a letter or report from a Confederate officer of artillery, addressed to some person unknown, and relating to purchases of military supplies for the Confederate army, and to vessels employed in blockade-running. The inclosure was as follows :—

Mr. Dudley to Mr. Adams.

" Sir,

" The gun-boat now being built by the Messrs. Laird and Co., at Birkenhead, opposite Liverpool, and which I mentioned to you in a previous despatch, is intended for the so-called Confederate Government in the Southern States. The evidence I have is entirely conclusive to my mind. I do not think there is the least room for doubt about it. Beaufort and Cudly, two of the officers from the privateer *Sumter*, stated that this vessel was being built for the Confederate States. The foreman in Messrs. Laird's yard says she is the sister to the gun-boat *Oreto*, and has been built for the same parties and for the same purpose; when pressed for a further explanation he stated that she was to be a privateer for the 'Southern Government in the United States.' The captain and officers of the steamer *Julia Usher*, now at Liverpool, and which is loaded to run the blockade, state that this gun-boat is for the Confederates, and is to be commanded by Captain Ballock.

" The strictest watch is kept over this vessel; no person except those immediately engaged upon her is admitted into the yard. On the occasion of the trial trip made last Thursday week, no one was admitted without a pass, and these passes were issued to but few persons, and those who are known here as active Secessionists engaged in sending aid and relief to the rebels.

" I understand that her armament is to consist of eleven guns, and that she is to enter at once, as soon as she leaves this port, upon her business as a privateer.

" The vessel is very nearly completed; she has had her first trial trip. This trial was successful, and entirely satisfactory to the persons who are superintending her construction. She will be finished

* Appendix, vol. i, p. 177.

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in nine or ten days. A part of her powder canister, which are to number 200, and which are of a new patent, made of copper with screw tops, are on board the vessel; the others are to be delivered in a few days. No pains or expense have been spared in her construction. Her engines are on the oscillating principle, and are 350 horse-power. She measures 1,050 tons burthen, and will draw 14 feet of water when loaded. Her screw or fan works in a solid brass frame casting, weighing near two tons, and is constructed as to be lifted from the water by steam-power. The platforms and gun-carriages are now being constructed.

"When completed and armed she will be a most formidable and dangerous craft; and, if not prevented from going to sea, will do much mischief to our commerce. The persons engaged in her construction say that no better vessel of her class was ever built.

"I have, &c.
(Signed) "THOS. H. DUDLEY."

The attention of Mr. Adams had been called by Mr. Dudley to the vessel mentioned in the foregoing Note and inclosure, both before she was launched, and immediately afterwards. The launching of this vessel took place on the 15th May, 1862, about a month before the date of Mr. Adams' first representation to Earl Russell. Mr. Dudley's attention had been directed to the vessel in November 1861, immediately on his arrival at Liverpool.

Immediately on the receipt of Mr. Adams' Note, Mr. Hammond, one of the Under-Secretaries of State for Foreign Affairs, wrote, by the direction of Earl Russell, to the Secretary to the Treasury and to the Law Officers of the Crown as follows:—

Mr. Hammond to the Secretary to the Treasury.

"Sir,
"I am directed by Earl Russell to transmit to you a copy of a letter from the United States' Minister at this Court calling attention to a steamer reported to be fitted out at Liverpool as a Southern privateer, and inclosing a copy of a letter from the United States' Consul at that port, reporting the result of his investigations into the matter; and I am to request that you will move the Lords Commissioners of Her Majesty's Treasury to cause immediate inquiries to be made respecting this vessel and to take such steps in the matter as may be right and proper.

"I am, &c.
(Signed) "E. HAMMOND."

Mr. Hammond to the Law Officers of the Crown.

"Gentlemen,
"I am directed by Earl Russell to transmit to you a letter from the United States' Minister at this Court, calling attention to a steamer reported to be fitting out at Liverpool as a Southern privateer, and inclosing a copy of a letter from the United States' Consul at that port reporting the result of his investigations into the matter; and I am to request that you will take these papers into your consideration and favour Lord Russell with any observations you may have to make upon this question.

"I am, &c.
(Signed) "E. HAMMOND."

Copies of Mr. Adams' Note and Mr. Dudley's letter were sent with each of the two preceding letters for the information of the Lords Commissioners of the Treasury and the Law Officers respectively. Earl Russell, on the same day, wrote as follows to Mr. Adams:—†

Earl Russell to Mr. Adams.

"Sir,
"I have the honour to acknowledge the receipt of your letter of the 23rd instant, calling attention to a steam-vessel which you state is now fitting-out at Liverpool with the intention of carrying on hostilities against the Government of the United States; and I have to acquaint you that I have lost no time in referring the matter to the proper Department of Her Majesty's Government.

"I am, &c.
(Signed) "RUSSELL."

The Law Officers of the Crown on the 30th June, 1862, made their Report as follows:—‡

The Law Officers of the Crown to Earl Russell.

"My Lord,
"We are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th June instant, stating that he was directed by your Lordship to transmit to us a letter from the United

* Appendix, vol. i, pp. 180, 181.

† Ibid., p. 180.

‡ Ibid., p. 181.

States' Minister at this Court, calling attention to a steamer reported to be fitted out at Liverpool as a Southern privateer, and inclosing a copy of a letter from the United States' Consul at that port, reporting the result of his investigations into the matter, and to request that we would take these papers into our consideration and favour your Lordship with any observations we might have to make upon this question.

"In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

"That, if the representation made to Her Majesty's Government by Mr. Adams is in accordance with the facts, the building and equipment of the steamer in question is a manifest violation of the Foreign Enlistment Act, and steps ought to be taken to put that Act in force and to prevent the vessel from going to sea.

"The report of the United States' Consul at Liverpool, inclosed by Mr. Adams, besides suggesting other grounds of reasonable suspicion, contains a direct assertion that the foreman of Messrs. Laird, the builders, has stated that this vessel is intended as a privateer for the service of the Government of the Southern States; and, if the character of the vessel and of her equipment be such as the same Report describes them to be, it seems evident that she must be intended for some warlike purpose.

"Under these circumstances we think that proper steps ought to be taken, under the direction of Her Majesty's Government, by the authorities of the Customs at Liverpool, to ascertain the truth, and that, if sufficient evidence can be obtained to justify proceedings under the Foreign Enlistment Act, such proceedings should be taken as early as possible. In the meantime, Mr. Adams ought, we think, to be informed that Her Majesty's Government are proceeding to investigate the case; but that the course which they may eventually take, must necessarily depend upon the nature and sufficiency of any evidence of a breach of the law which they may be enabled to obtain; and that it will be desirable that any evidence in the possession of the United States' Consul at Liverpool should be at once communicated to the officers of Her Majesty's Customs at that port.

"We have, &c.

(Signed) " Wm. Atherton.

" Rousell Palmer."

The Commissioners of Customs on the 1st July, 1862, reported to the Treasury as follows:—*

Report by the Commissioners of Customs.

"To the Lords Commissioners of Her Majesty's Treasury.

"Your Lordships having referred to us the annexed letter from Mr. Hammond, the Under-Secretary of State for Foreign Affairs, transmitting, by desire of Earl Russell, copy of a letter from the United States' Minister at this Court, calling attention to a steamer reported to be fitting out at Liverpool as a Southern privateer, and inclosing copy of a letter from the United States' Consul at that port, reporting the result of his investigation into the matter, and requesting that immediate inquiries may be made respecting this vessel, and such steps taken in the matter as may be right and proper;

"We report that, immediately on receipt of your Lordships' reference, we forwarded the papers to our collector at Liverpool for his special inquiry and report, and we learn from his reply that the fitting out of the vessel has not escaped the notice of the officers of this revenue, but that as yet nothing has transpired concerning her which has appeared to demand a special report.

"We are informed that the officers have at all times free access to the building-yards of the Messrs. Laird, at Birkenhead, where the vessel is lying; and that there has been no attempt on the part of her builders to disguise what is most apparent, that she is intended for a ship of war; and one of the surveyors in the service of this Revenue, who had been directed by the collector personally to inspect the vessel, has stated that the description of her in the communication of the United States' Consul is correct, with the exception that her engines are not constructed on the oscillating principle. Her dimensions are as follows:—Length, 211 feet 6 inches; breadth, 31 feet 8 inches; depth, 17 feet 8 inches; and her gross tonnage, by the present rate of admeasurement, is 682 $\frac{1}{2}$ tons. This surveyor has further stated that she has several powder magazines on board, but, as yet, neither guns nor carriages, and that the current report in regard to the vessel is, that she has been built for a foreign Government, which is not denied by the Messrs. Laird, with whom the surveyor has conferred; but they do not appear disposed to reply to any questions respecting the destination of the vessel after she leaves Liverpool. And the officers have no other reliable source of information on that point; and having referred the matter to our solicitor, he has reported his opinion that, at present, there is not sufficient ground to warrant the detention of the vessel, or any interference on the part of this Department, in which Report we beg to express our concurrence. And, with reference to the statement of the United States' Consul, that the evidence he has in regard to this vessel being intended for the so-called Confederate Government in the Southern States is entirely conclusive to his mind, we would observe that, inasmuch as the officers of Customs of Liverpool would not be justified in taking any steps against the vessel unless sufficient evidence to warrant her detention should be had before them, the proper course would be for the Consul to submit such evidence as he possesses to the collector at that port, who would thereupon take such measures as the provisions of the Foreign Enlistment Act would require. Without the production of full and sufficient evidence to justify their proceedings, the seizing officers might entail on themselves and on the Government very serious consequences.

* Appendix, vol. i, p. 182.

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" We beg to add that the officers at Liverpool will keep a strict watch on the vessel, and that any further information that may be obtained concerning her will be forthwith reported.

(Signed) " THO. F. FREMANTLE.
" GREENVILLE C. L. BERKELEY.

" *Custom-House, July 1, 1862.*"

A copy of the Report of the Commissioners of Customs was, on the 4th July, 1862, transmitted by Earl Russell to Mr. Adams, inclosed in the following letter:—*

Earl Russell to Mr. Adams.

" Sir,

" *Foreign Office, July 4, 1862.*

" With reference to my letter of the 25th ultimo, I have the honour to inclose a copy of a Report from the Commissioners of Customs, respecting the vessel which you have been informed is being built at Liverpool for the Government of the so-called Confederate States, and in accordance therewith I would beg leave to suggest that you should instruct the United States' Consul at Liverpool to submit to the Collector of Customs at that port such evidence as he may possess tending to show that his suspicions as to the destination of the vessel in question are well founded.

" I am, &c.
(Signed) " RUSSELL."

Mr. Adams replied as follows:—*

Mr. Adams to Earl Russell.

" My Lord,

" *Legation of the United States, London, July 7, 1862.*

" I have the honour to acknowledge the receipt of your note of the 4th instant, covering a copy of the Report from the Commissioners of Customs respecting a vessel presumed by me to be in course of preparation at Liverpool to carry on hostile operations against the United States.

" In accordance with your Lordship's suggestion, I shall at once instruct the Consul of the United States to submit to the Collector of Customs at that port such evidence as he possesses to show that the suspicions he entertains of the character of that vessel are well founded.

" I pray, &c.
(Signed) " CHARLES FRANCIS ADAMS."

On the 10th July, 1862, the Collector of Customs at Liverpool received from Mr. Dudley the following letter:—†

The United States' Consul to the Collector of Customs, Liverpool.

" Sir,

" *Liverpool, July 9, 1862.*

" In accordance with a suggestion of Earl Russell in a communication to Mr. Adams, the American Minister in London, I beg to lay before you the information and circumstances which have come to my knowledge relative to the gun-boat now being fitted out by Messrs. Laird, at Birkenhead, for the Confederates of the Southern United States of America, and intended to be used as a privateer against the United States.

" On my arrival, and taking charge of the Consulate at Liverpool in November last, my attention was called by the Acting Consul and by other persons to two gun-boats being or to be fitted out for the so-called Confederate Government: the *Oreto*, fitted out by Mr. Miller and Messrs. Fawcett, Preston, and Co., and the one now in question. Subsequent events fully proved the suspicion with regard to the *Oreto* to be well founded; she cleared from Liverpool in March last for Palermo and Jannieni, but sailed direct for Nassau, where she now is receiving her armament as a privateer for the so-called Confederate Government; and my attention was called repeatedly to the gun-boat building by Mr. Laird, by various persons, who stated that she also was for a Confederate privateer, and was being built by the Messrs. Lairds for that express purpose.

" In May last two officers of the Southern privateer *Sunter*, named Caddy and Beaufort, passed through Liverpool on their way to Havannah and Nassau, and while here stated that there was a gun-boat building by Mr. Laird, at Birkenhead, for the Southern Confederacy; and not long after that a foreman employed about the vessel in Mr. Laird's yard stated that she was the sister of the *Oreto*, and intended for the same service, and when pressed for an explanation, further stated that she was to be a privateer for the Southern Government in the United States.

" When the vessel was first tried, Mr. Wellman, one of the firm of Fraser, Trenholm, and Co. (who are well known as agents for the Confederate Government), Andrew and Thomas Byrne, and other persons, well known as having been for months actively engaged in sending munitions of war for said Government, were present, and have accompanied her on her various trials, as they had accompanied the *Oreto* on her trial trip and on her departure.

" In April last the Southern screw-steamer *Annie Childs*, which had run the blockade out of Charleston, and the name of which was changed at this port to the *Julia Usher*, was laden with munitions of war, consisting of a large quantity of powder, rifled cannon, &c., by Messrs. Fraser, Trenholm, and Co., for the Southern Confederacy, and left Liverpool to run the blockade under the command of a Captain

* Appendix, vol. I, p. 184.

† Ibid., p. 185.

Hammer, and having on board several of the crew of the privateer Sumter, to which I have before referred.

" For some reason unknown this vessel came back and is now here. Since her return a youth named Robinson, who had gone in her as a passenger, has stated that the gun-boat building at Laird's for the Southern Confederacy, was a subject of frequent conversation among the officers while she (the Julia Usher) was out. That she was all the time spoken of as a Confederate vessel; that Captain Bullock was to command her; that the money for her was advanced by Fraser, Trenholme, and Co.; that she was not to make any attempt to run the blockade, but would go at once as a privateer; that she was to mount eleven guns; and that if the Julia Usher was not going, the six men from the Sumter, who were on board the Julia Usher, were to join the gun-boat. This youth, being a native of New Orleans, was extremely anxious to get taken on board the gun-boat, and wished the persons he made the communication to, to assist him and see Captain Bullock on his behalf. He has, I understand, been removed to a school in London. With reference to his statement, I may observe, that Captain Hammer referred to is a South Carolinian, has been for many years in Fraser, Trenholme, and Co.'s employ, is greatly trusted by them, and is also intimate with Captain Bullock, so that he would be likely to be well informed on the subject: and as we had no notion at that time of returning to Liverpool, he would have no hesitation in speaking of the matter to his officers, and the persons from the Sumter. I may also state that Captain Bullock referred to is in Liverpool, that he is an officer of the Confederate Navy, that he was sent over here for the express purpose of fitting out privateers and sending over munitions of war; that he transacts his business at the office of Fraser, Trenholme, and Co.; that he has been all the time in communication with Fawcett, Preston, and Co., who fitted out the Oresto, and with Laird's, who are fitting out this vessel; that he goes almost daily on board the gun-boat, and seems to be recognized as an authority.

" A Mr. Blair, of Paradise Street, in this town, who furnished the cabins of the Laird gun-boat, has also stated that all the fittings and furniture were selected by Captain Bullock, and were subject to his approval, although paid for by Mr. Laird.

" The information on which I have formed an undoubting conviction that this vessel is being fitted out for the so-called Confederate Government, and is intended to cruise against the commerce of the United States, has come to me from a variety of sources, and I have detailed it to you as far as practicable. I have given you the names of persons making the statements, but as the information in most cases is given to me by persons out of friendly feeling to the United States, and in strict confidence, I cannot state the names of my informants, but what I have stated is of such a character that little inquiry will confirm its truth.

" Everything about the vessel shows her to be a war vessel; she has well constructed magazines; she has a number of canisters of a peculiar and expensive construction for containing powder; she has platforms already screwed to her decks for the reception of swivel guns. Indeed, the fact that she is a war vessel is not denied by Messrs. Laird, but they say she is for the Spanish Government. This they stated on the 3rd of April last, when General Burgoyne visited their yard, and was shown over it, and the various vessels being built there by Messrs. John Laird, junior, and Henry H. Laird, as was fully reported in the papers at the time.

" Seeing the statement, and having been already informed from so many respectable sources that she was for the so-called Confederate Government, I at once wrote to the Minister in London to ascertain from the Spanish Embassy whether the statement was true. The reply was a positive assurance that she was not for the Spanish Government. I am therefore authorized in saying that what was stated on that occasion, as well as statements since made that she is for the Spanish Government, are untrue.

" I am satisfied beyond a doubt that she is for a Confederate war vessel.

" If you desire any personal explanation or information, I shall be happy to attend you whenever you may request it.

" I am, &c.
(Signed) " THOMAS H. DUDLEY."

The statement in the above letter that the Florida was receiving armament at Nassau was erroneous. The Florida, as has been already shown, did not receive any armament at Nassau.

To this letter the Collector replied as follows:—*

The Collector of Customs, Liverpool, to the United States' Consul.

" Sir,
" I beg to acknowledge the receipt of your communications of yesterday's date (received this morning), and to acquaint you that I shall immediately submit the same for the consideration and direction of the Board of Customs, under whom I have the honour to serve. I may observe, however, that I am respectfully of opinion the statement made by you is not such as could be acted upon by the officers of this revenue, unless legally substantiated by evidence.

" I have, &c.
(Signed) " S. PRICE EDWARDS."

A copy of Mr. Dudley's letter of the 9th July was on the 10th July transmitted by the Collector to the Commissioners of Customs, together with the following Report from the Surveyor of Customs:—†

* Appendix, vol. i, p. 186.

† Ibid., p. 185.

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Surveyor's Report.

"Sir,

"I beg to report that, agreeably with your directions, I have this day inspected the steamer lying at the building-yard of the Messrs. Laird at Birkenhead, and find that she is in the same state, as regards her armament, as on the date of my former report.

"She has no guns or carriages on board, nor are her platforms fitted to the deck.

"Surveyor's Office, July 10, 1862.

"Very respectfully,
(Signed) "E. MORGAN."

The papers transmitted by the Collector as aforesaid were referred by the Commissioners of Customs to the Solicitor to the Customs, who is the official adviser of the Department on matters of law; and he, on the 11th July, 1862, reported as follows:—*

Report from the Solicitor to the Customs.

"There is only one proper way of looking at this question. If the Collector of Customs were to detain the vessel in question, he would no doubt have to maintain the seizure by legal evidence in a Court of Law, and to pay damages and costs in case of failure. Upon carefully reading the statement I find the greater part, if not all, is hearsay and inadmissible, and as to a part the witnesses are not forthcoming or even to be named. It is perfectly clear to my mind that there is nothing in it amounting to *prima facie* proof sufficient to justify a seizure, much less to support it in a Court of Law, and the Consul could not expect the Collector to take upon himself such a risk in opposition to rules and principles by which the Crown is governed in matters of this nature.

(Signed) "F. J. HAMEL.

"July 11, 1862."

The Commissioners of Customs accordingly wrote to the Collector as follows:—*

The Commissioners of Customs to the Collector at Liverpool.

"Sir,

"Having considered your Report of the 10th instant, inclosing a communication which you had received from Mr. T. H. Dudley, American Consul at Liverpool, apprising you of certain circumstances relative to a vessel which he states is now being fitted out by Messrs. Laird at Birkenhead, as a gun-boat for the so-called Confederate Government of the Southern States of America, and intended to be used as a privateer against the United States, and having communicated with our Solicitor on the subject,—

"We acquaint you that there does not appear to be *prima facie* proof sufficient in the statement of the Consul to justify the seizure of the vessel, and you are to apprise the Consul accordingly.

"We transmit, for your information, a copy of the Report of our Solicitor on the matter dated the 11th instant.

(Signed) "FREDERICK GOULBURN.
"R. W. GREY."

Copies of the above papers were, on the 17th July, sent by the Commissioners of Customs to the Treasury for the information of the Lords Commissioners of the Treasury.

Up to this point, the information which was in the possession of Her Majesty's Government respecting the vessel consisted chiefly, and almost entirely, of hearsay statements, made by persons who could not be produced, as to alleged admissions by other persons who were represented to be either concerned in her equipment or identified in interest with the Confederate States, and whom, according to the rules of English legal procedure, Her Majesty's Government could not compel to give similar admissions or evidence. It was, however, apparent that she was intended for war; and there was some (though very slight) evidence tending to connect her with persons who were believed or known to be partisans or agents of the Government of the Confederate States. Mr. Dudley admitted, at the same time, that he could not give the names of his informants. The Captain Bullock mentioned above was, in fact (as Her Majesty's Government believes) an officer and agent of the Government of the Confederate States, but Her Majesty's Government had at that time no means of proving him to be such.

On the 22nd July, 1862, the Commissioners of Customs received from the Collector at Liverpool the following letter:—†

* Appendix, vol. i, p. 187.

† Ibid., p. 188.

The Collector of Customs, Liverpool, to the Commissioners of Customs.

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" Honourable Sirs,

" The United States' Consul, accompanied by his Solicitor, Mr. Squerry, has just been here with the witnesses whose affidavits are inclosed, requesting me to seize the gun-boat alluded to in your Honours' order of the 15th instant, upon the evidence adduced to him that the gun-boat has been fitted out by Messrs. Laird of Birkenhead for the Confederate Government of the Southern States.

" The only evidence of importance, as appears to me, is that of William Passmore, who had engaged himself as a sailor to serve in the vessel.

" I shall be obliged by the Board being pleased to instruct me by telegraph how I am to act, as the ship appears to be ready for sea, and may leave any hour she pleases.

" Respectfully,
(Signed) " S. PRICE EDWARDS."

" P.S.—Nothing has been done to her since my first representation, nor has anything besides coals been placed in her.

" S. P. E."

Inclosed in this letter were copies of six sworn depositions, which were as follows:—

Depositions.

1.

" I, William Passmore, of Birkenhead, in the county of Chester, mariner, make oath, and say as follows:—

" 1. I am a seaman, and have served as such on board Her Majesty's ship Terrible during the Crimean War.

" 2. Having been informed that hands were wanted for a fighting-vessel built by Messrs. Laird and Co., of Birkenhead, I applied on Saturday, which was, I believe, the 21st day of June last, to Captain Butcher, who, I was informed, was engaging men for the said vessel, for a berth on board her.

" 3. Captain Butcher asked me if I knew where the vessel was going, in reply to which I told him I did not rightly understand about it. He then told me the vessel was going out to the Government of the Confederate States of America. I asked him if there would be any fighting, to which he replied, yes, they were going to fight for the Southern Government. I told him I had been used to fighting-vessels, and showed him my papers. I asked him to make me signalman on board the vessel, and, in reply, he said that no articles would be signed until the vessel got outside, but he would make me signalman, if they required one, when they got outside.

" 4. The said Captain Butcher then engaged me as an able seaman on board the said vessel, at the wages of 4/- 10s. per month; and it was arranged that I should join the ship in Messrs. Laird and Co.'s yard on the following Monday. To enable me to get on board, Captain Butcher gave me a password, the number '290.'

" 5. On the following Monday, which was, I believe, the 23rd of June last, I joined the said vessel in Messrs. Laird and Co.'s yard at Birkenhead, and I remained by her till Saturday last.

" 6. The said vessel is a screw-steamer of about 1,100 tons burthen, as far as I can judge, and is built and fitted up as a fighting-ship in all respects; she has a magazine and shot and canister-racks on deck, and is pierced for guns, the sockets for the bolts of which are laid down. The said vessel has a large quantity of stores and provisions on board, and she is now lying at the Victoria wharf in the great float at Birkenhead, where she has taken in about 300 tons of coal.

" 7. There are now about thirty hands on board her, who have been engaged to go out in her; most of them are men who have previously served on board fighting-ships; and one of them is a man who served on board the Confederate steamer Sumter. It is well known by the hands on board that the vessel is going out as a privateer for the Confederate Government to act against the United States under a Commission from Mr. Jefferson Davis. Three of the crew are, I believe, engineers; and there are also some firemen on board.

" 8. Captain Butcher and another gentleman have been on board the ship almost every day. It is reported on board the ship that Captain Butcher is to be the sailing-master, and that the other gentleman, whose name, I believe, is Bullock, is to be the fighting captain.

" 9. To the best of my information and belief, the above-mentioned vessel, which I have heard is to be called the Florida, is being equipped and fitted out, in order that she may be employed in the service of the Confederate Government in America, to cruise and to commit hostilities against the Government and people of the United States of America.

(Signed) " WILLIAM PASSMORE."

" Sworn before me at the Custom-house, Liverpool, this 21st day of July, 1862.

(Signed) " S. PRICE EDWARDS, Collector."

2.

" I, John de Costa, of No. 8, Waterloo Road, Liverpool, Shipping Master, make oath, and say as follows:—

" 1. I know, and have for several months known, by sight, Captain Bullock, who is very generally known in Liverpool as an Agent or Commissioner of the Confederate States in America.

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The Alabama.

"2. In the month of March last I saw the screw-steamer Annie Childs, which had run the blockade from Charleston, enter the River Mersey. She came up the Mersey with the Confederate flag flying at her peak; and I saw the Oretto, a new gun-boat which had been recently built by Messrs. W. C. Miller and Sons, and which was then lying at anchor in the river off Egremont, dip her colours three times in acknowledgment of the Annie Childs, which vessel returned the compliment, and a boat was immediately afterwards dispatched from the Annie Childs to the Oretto, with several persons on board, besides the men who were at the oars.

"3. On the 22nd day of March last I was on the North Landing-stage between 7 and 8 o'clock in the morning; I saw the said Captain Bullock go on board a tender, which afterwards took him off to the said gun-boat Oretto, which was then lying in the Slayne. Just before he got on board the tender he shook hands with a gentleman who was with him, and said to him, 'This day six weeks you will get a letter from me from Charleston,' or words to that effect.

"4. On the same day, between 11 and 12 o'clock, as well as I can remember, I saw the Oretto go to sea. She came well in on the Liverpool side of the river, and from the Princess Pier head, where I was standing, I distinctly saw the said Captain Bullock on board her, with a person who had been previously pointed out to me by a fireman who came to Liverpool in the Annie Childs as a Charleston pilot, who had come over in the Annie Childs with Captain Bullock to take the gun-boat out.

(Signed) "JOHN DE COSTA."

"Sworn before me, at the Custom-house, Liverpool, this 21st day of July, 1862.

(Signed) "S. PRICE EDWARDS, Collector."

3.

"I, Allan Stanley Clare, of Liverpool, in the county of Lancaster, Articled Clerk, make oath, and say as follows:—

"1. On the 21st day of July now instant, I examined the book at the Birkenhead Dockmaster's Office at Birkenhead, containing a list of all vessels which enter the Birkenhead docks; and I found in such book an entry of a vessel described as No. 290, and from the entries in the said book, in reference to such vessel, it appears that she is a screw-steamer, and that her registered tonnage is 500 tons, and that Matthew J. Butcher is her master.

(Signed) "ALLEN S. CLARE."

"Sworn before me, at the Custom-house, Liverpool, this 21st day of July, 1862.

(Signed) "S. PRICE EDWARDS, Collector."

4.

"We, Henry Wilding, of Liverpool, in the county of Lancaster, Gentleman, and Mathew Maguire, of Liverpool aforesaid, Agent, make oath and say as follows:—

"1. I, the said Matthew Maguire, for myself, say that on the 15th day of July now instant, I took Richard Brogan, whom I know to be an apprentice working in the ship-building yard of Messrs. Laird and Co., at Birkenhead, to the above-named deponent, Henry Wilding, at his residence at New Brighton.

"2. And I, the said Henry Wilding, for myself, say as follows:—I am the Vice-Counsel of the United States of North America, at Liverpool.

"3. On the 15th day of July now instant I saw the said Richard Brogan and examined him in reference to a gun-boat which I had heard was being built by the said Messrs. Laird and Co. for the so-called Confederate Government, and the said Richard Brogan then informed me that the said vessel was built to carry four guns on each side and four swivel guns; that Captain Bullock had at one time, when the vessel was in progress, come to the yard almost every day to select the timber to be used for the vessel. That the said Captain Bullock was to be the captain of the said vessel; and that the said Captain Bullock had asked the said Richard Brogan to go as carpenter's mate in the said vessel for three years, which the said Richard Brogan had declined to do, because Mr. Laird, who was present at the time, would not guarantee his wages. That the said vessel was to carry 120 men, and that 30 able seamen were already engaged for her. That the petty officers for the said vessel were to be engaged for three years, and the seamen for five months. That the said vessel was then at the end of the new warehouses in the Birkenhead Dock, and that it was understood she was to take her guns on board at Messrs. Laird and Co.'s shed further up the dock; and that it was generally understood by the men in Messrs. Laird and Co.'s yard that the said vessel was being built for the Confederate Government.

"4. The vessel above-mentioned is the same which is now known as No. 290, and I verily believe that the said vessel is in fact intended to be used as a privateer or vessel of war, under a Commission from the so-called Confederate Government against the United States' Government.

(Signed) "H. WILDING,
"MATHEW MAGUIRE."

"Sworn before me, at the Custom-house, Liverpool, this 21st day of July, 1862.

(Signed) "S. PRICE EDWARDS, Collector."

5.

"I, Thomas Haines Dudley, of No. 3, Wellesley Terrace, Prince's Park, in the Borough of Liverpool, in the County of Lancaster, Esq., being one of the people called Quakers, affirm and say as follows:—

" I am the Consul of the United States of North America, for the port of Liverpool and its dependencies.

" 2. In the month of July, in the year 1861, information was sent by the United States' Government to the United States' Consulate at Liverpool that a Mr. James D. Bullock of Savannah, in the State of Georgia, who was formerly the master of an American steamer called the Cahawba, was reported to have left the United States for England, taking with him a credit for a large sum of money, to be employed in fitting out privateers, and also several commissions issued by the Southern Confederate States for such privateers, and in the month of August in the year 1861, information was sent by the United States' Government to the United States' Consulate at Liverpool, that the said Captain Bullock was then residing near Liverpool, and acting as the agent of the said Confederate States in Liverpool and London.

" 3. In accordance with instructions received from the Government of the United States, steps have been taken to obtain information as to the proceedings and movements of the said James D. Bullock, and I have ascertained the following circumstances, all of which I verily believe to be true, viz., that the said James D. Bullock is in constant communication with parties in Liverpool, who are known to be connected with, and acting for, the parties who have assumed the Government of the Confederate States. That the said James D. Bullock, after remaining for some time in England, left the country, and after an absence of several weeks, returned to Liverpool in the month of March last from Charleston, in the State of South Carolina, one of the seceded States, in a screw-steamer then called the Annie Childs, which had broken the blockade of the port of Charleston, then and now maintained by the United States' Navy, and which vessel, the Annie Childs, carried the flag of the Confederate States as she came up the Mersey. That, shortly after the arrival of the said James D. Bullock at Liverpool in the Annie Childs, as aforesaid, he again sailed from Liverpool in a new gun-boat called the Oretto, built at Liverpool by Messrs. W. C. Miller and Sons, shipbuilders, and completed in the early part of the present year, and which gun-boat, the Oretto, though she cleared from Liverpool for Palermo and Jamaica, in reality never went to those places, but proceeded to Nassau, New Providence, to take on board guns and arms, with a view to her being used as a privateer or vessel of war under a Commission from the so-called Confederate Government against the Government of the United States, and which said vessel, the Oretto, is stated to have been lately seized at Nassau by the Commander of Her Majesty's ship Greyhound. That the said James D. Bullock has since returned again to Liverpool, and that before he left Liverpool and since he returned, he has taken an active part in superintending the building, equipment, and fitting out of another steam gun-boat, known as No. 290, which has lately been launched by Messrs. Laird and Co., of Birkenhead, and which is now lying, as I am informed and believe, ready for sea in the Birkenhead Docks, with a large quantity of provisions and stores, and thirty men on board. That the said James D. Bullock is going out in the said gun-boat No. 290, which is nominally commanded by one Matthew S. Butler, who, I am informed, is well acquainted with the navigation of the American coast, having formerly been engaged in the coasting trade between New York, Charleston, and Nassau.

" 4. From the circumstances which have come to my knowledge I verily believe that the said gun-boat No. 290 is being equipped and fitted out as a privateer or vessel of war to serve under a Commission to be issued by the Government of the so-called Confederate States, and that the said vessel will be employed in the service of the said Confederate States to cruise and commit hostilities against the Government and people of the United States of North America.

(Signed) " THOMAS H. DUDLEY."

" Affirmed and taken before me at the Custom-house, Liverpool, this 21st day of July, 1862.

(Signed) " S. PRICE EDWARDS, Collector."

6.

" I, Matthew Maguire, of Liverpool, Agent, make oath and say as follows:—

" 1. I know not Captain J. D. Bullock, who is commonly reported to be the Agent or Commissioner of the Confederate States of America at Liverpool.

" 2. I have seen the said J. D. Bullock several times at the yard of Messrs. Laird and Co., at Birkenhead, where a gun-boat, known as No. 290, has lately been built, whilst the building of the said vessel has been going on.

" 3. On the 2nd day of July now instant, I saw the said J. D. Bullock on board the said vessel in Messrs. Laird and Co.'s yard; he appeared to be giving orders to the workmen who were employed about such vessel.

(Signed) " MATTHEW MAGUIRE."

" Sworn before me at the Custom-house, Liverpool, this 21st day of July, 1862.

(Signed) " S. PRICE EDWARDS, Collector."

The above depositions were referred, as soon as they were received, to the Assistant-Solicitor and Solicitor of Customs, who, on the same day, reported as follows:—*

Part VI.

The Alabama.

Reports of the Assistant Solicitor and Solicitor of Customs, referred to in the preceding Letter.

" In my opinion there is not sufficient evidence in this case to justify the detention of the vessel, under the 59th George III, c. 69. The only affidavit that professes to give anything like positive evidence is that of the seaman Passmore; but, assuming all he states to be true, what occurred between the reputed master (Bntcher) and himself, would not warrant a detention under section 6, nor support an information for the penalty under that section. Nor do I think, however probable it may seem that the vessel is fitted out for the military operations mentioned, that sufficient evidence has been adduced to entitle the applicants to the interference of the Collector of Customs at Liverpool. The only justifiable grounds of seizure under section 7 of the Act would be the production of such evidence of the fact as would support an indictment for the misdemeanor under that section.

(Signed) " J. O'DOWD.

" Customs, July 22, 1862."

" I entirely concur with Mr. O'Dowd in opinion that there is not sufficient evidence to warrant the seizure or detention of the ship by the officers of Customs. There appears to be some evidence of enlistment of individuals, and if that were sufficient to satisfy a Court, they would be liable to pecuniary penalties, for security of which, if recovered, the Customs might detain the ship until those penalties were satisfied or good bail given; but there is not evidence enough of enlistment to call upon the Customs to prosecute. The United States' Consul or any other person may do so at their own risk, if they see fit.

(Signed) " F. J. HANELL."

" July 22, 1862."

In accordance with these Reports, the Commissioners of Customs on the same 22nd July, 1862, wrote to the Collector as follows:—*

The Commissioners of Customs to the Collector of Customs, Liverpool.

" Sir,

" London, July 22, 1862.

" Having considered your report of the 21st instant, stating, with reference to previous correspondence which has taken place on the subject of a gun-boat which is being fitted out by Messrs. Laird, of Birkenhead, that the United States' Consul, accompanied by his solicitor, has attended at the Custom-house with certain witnesses, whose affidavits you have taken and have submitted for our consideration, and has requested that the vessel may be seized, under the provisions of the Foreign Enlistment Act, upon the ground that the evidence adduced affords proof that she is being fitted out for the Government of the Confederate States of America,—

" We acquaint you that we have communicated with our solicitor on the subject, who has advised us that the evidence submitted is not sufficient to justify any steps being taken against the vessel under either the 6th or 7th section of Act 59 George III, cap. 69, and you are to govern yourself accordingly.

" The Solicitor has, however, stated that if there should be sufficient evidence to satisfy a Court of enlistment of individuals, they would be liable to pecuniary penalties, for security of which, if recovered, this Department might detain the ship until those penalties are satisfied, or good bail given; but there is not sufficient evidence to require the Customs to prosecute; it is, however, competent for the United States' Consul, or any other person to do so at their own risk if they see fit.

(Signed) " T. F. FREMANTLE.
" G. C. L. BERKELEY."

On the same day, the papers were transmitted, by order of the Commissioners of Customs, to the Treasury, with a covering letter, which was as follows:—†

Mr. Gardner to Mr. Hamilton.

" Sir,

" Custom-House, July 22, 1862.

" With reference to the Report of this Board of the 1st instant, respecting a vessel fitting out at Liverpool, which it is stated is intended to be used as a privateer by the so-called Confederate States of America,—

" I am directed to state that the Board have this day received a Report from their Collector at Liverpool inclosing affidavits which have been made before him with a view to the detention of the vessel; and in transmitting to you, by desire of the Board, the accompanying copy of the Collector's Report, with the affidavits referred to, I am to state that the Board, having communicated with their Solicitor, are advised that the evidence is not sufficient to justify any steps being taken against the vessel under either the 6th or 7th section of the Act 59 George III, cap. 69, and they have apprized the Collector at Liverpool accordingly, informing him at the same time that the Solicitor has also stated that if there should be sufficient evidence to satisfy a Court of the enlistment of individuals, they would be liable to pecuniary penalties, for security of which, if recovered, the Customs might detain the ship until those penalties are satisfied, or good bail given; but that there is not evidence enough of enlistment to call upon the Customs to prosecute, although the United States' Consul, or any other person, may do so at their own risk if they see fit.

"I am, however, to submit, should the Lords Commissioners of Her Majesty's Treasury have any doubt upon the subject, whether it may not be advisable that the opinion of the Law Officers of the Crown should be taken.

"I am, &c.
(Signed) "J. G. GARDNER."

The Secretary to the Treasury, on receiving the papers, sent them immediately to Mr. Layard, one of the Under-Secretaries of State for the Foreign Department, with an unofficial letter, which was as follows:—*

Mr. Hamilton to Mr. Layard.

"My dear Mr. Layard,

"Treasury, July 22, 1862.

"As the communication may be considered pressing, I send it to you unofficially to save time. Perhaps you will ascertain from Lord Russell whether it is his wish that we should take the opinion of the Law Officers as to the case of this vessel. It is stated that she is nearly ready for sea.

"Sincerely yours,
(Signed) "GEO. A. HAMILTON."

The papers thus sent were received at the Foreign Office on the 23rd July, 1862 and were, on the same day, referred to the Law Officers of the Crown, with the following letter:—†

Mr. Layard to the Law Officers of the Crown.

"(Immediate.)

"Gentlemen,

"Foreign Office, July 23, 1862.

"With reference to your Report of the 30th ultimo, I am directed by Earl Russell to transmit to you the accompanying papers, which have been received by the Board of Treasury from the Commissioners of Customs, containing further information respecting the vessel alleged to be fitting out at Liverpool for the service of the so-called Confederate States; and I am to request that you will take the same into your consideration, and favour Lord Russell at your earliest convenience with your opinion thereupon.

"The former papers on this subject are inclosed for reference if required.

"I am, &c.
(Signed) "A. H. LAYARD."

It will have been seen from the above statement that the evidence laid by Mr. Dudley before the Collector of Customs at Liverpool on the 21st July was on the same day sent to London, on the following day (the 22nd) referred to the official advisers of the Customs Department and reported on by them, and on the 23rd referred to the Law Officers of the Crown.

Of the six depositions one only (that of Passunore) contained any evidence which was at once material to the question and legally admissible. To rely on evidence of this kind proceeding from a single witness, without more corroboration or without inquiry into his antecedents, would, according to English judicial experience, have been very unsafe in a case of this nature. Of the contents of the five others the greater part was merely hearsay and not admissible as evidence; and they furnished grounds of suspicion, but not sufficient grounds for belief.

Copies of the depositions were also, on the 22nd, sent by Mr. Adams to Earl Russell, with the following Note:†—

Mr. Adams to Earl Russell.

"My Lord,

"Legation of the United States, London, July 22, 1862.

"I have the honour to transmit copies of six depositions taken at Liverpool, tending to establish the character and destination of the vessel to which I called your Lordship's attention in my note of the 23rd of June last.

"The originals of these papers have already been submitted to the Collector of the Customs at that port, in accordance with the suggestions made in your Lordship's note to me of the 4th of July, as the basis of an application to him to act under the powers conferred by the Enlistment Act. But I feel it to be my duty further to communicate the facts as there alleged to Her Majesty's Government, and to request that such further proceedings may be had as may carry into full effect the determination which I doubt not it ever entertains to prevent, by all lawful means, the fitting out of hostile expeditions against the Government of a country with which it is at peace.

"I avail, &c.
(Signed) "CHARLES FRANCIS ADAMS."

On the 23rd July two additional depositions were sent by Mr. A. T. Squires of

* Appendix, vol. i, p. 188.

† Ibid., p. 183.

Liverpool, a Solicitor employed by Mr. Dudley, to the Board of Customs, with the following letter: —*

Mr. Squarey to Mr. Gardner.

"Sir,

" Referring to an application which I made on behalf of the United States' Government, under the instructions of their Consul at Liverpool, to the Collector of Customs at Liverpool on Monday last, for the detention under the provisions of the Act 59 Geo. III, cap. 69, of a steam gun-boat built by Messrs. Laird and Co., at Birkenhead, and which there is no doubt is intended for the Confederate States, to be used as a vessel of war against the United States' Government, I beg now to inclose two affidavits which reached me this morning from Liverpool: one made by Robert John Taylor, and the other by Edward Roberts, and which furnish additional proof of the character of the vessel in question.

" I also inclose a Case which has been submitted to Mr. Collier, Q.C., with his opinion thereon. I learnt this morning from Mr. O'Dowd that instructions were forwarded yesterday to the Collector at Liverpool not to exercise the powers of the Act in this instance, it being considered that the facts disclosed in the affidavits made before him were not sufficient to justify the Collector in seizing the vessel. On behalf of the Government of the United States, I now respectfully request that this matter, which I need not point out to you involves consequences of the gravest possible description, may be considered by the Board of Customs on the further evidence now adduced. The gun-boat now lies in the Birkenhead Docks, ready for sea in all respects, with a crew of fifty men on board; she may sail at any time, and I trust that the urgency of the case will excuse the course I have adopted of sending these papers direct to the Board instead of transmitting them through the Collector at Liverpool, and the request which I now venture to make that the matter may receive immediate attention.

" I have, &c.

(Signed) " A. T. SQUAREY."

The two additional depositions were as follows:—

Depositions.

1.

" I, Edward Roberts, of No. 6 Vere Street, Toxteth Park, in the county of Lancaster, ship-carpenter, make oath and say as follows:—

" 1. I am a ship-carpenter, and have been at sea for about four years in that capacity.

" 2. About the beginning of June last I had been out of employ for about two months, and hearing that there was a vessel in Messrs. Laird and Co.'s yard fitting out to run the blockade, I applied to Mr. Barnett, shipping-master, to get me shipped on board the said vessel.

" 3. On Thursday, the 19th day of June last, I went to the said Mr. Barnett's office, No. 11, Hanover Street, Liverpool, in the county of Lancaster, and was engaged for the said vessel as carpenter's mate. By the direction of the said Mr. Barnett I met Captain Bateher the same day on the George's Landing-stage, and followed him to Messrs. Laird and Co.'s shipbuilding yard, and on board a vessel lying there. The said Captain Bateher spoke to the boatswain about me, and I received my orders from the said boatswain. At dinner-time the said day, as I left the yard, the gate-man asked me if I was 'going to work on that gun-boat,' to which I replied, 'Yes.'

" 4. The said vessel is now lying in the Birkenhead float, and is known by the name No. 290. The said vessel has coal and stores on board. The said vessel is pierced for guns, I think four on a side, and a swivel gun. The said vessel is fitted with shot- and canister-rooms, and has a magazine. There are about fifty men, all told, now on board the said vessel. It is generally understood on board of the said vessel that she is going to Nassau for the Southern Government.

" 5. I know Captain Bullock by sight, and have seen him on board of the said vessel five or six times; I have seen him go round the said vessel with Captain Bateher. I understood, both at Messrs. Laird and Co.'s yard and also on board the said vessel, that the said Captain Bullock was the owner of the said vessel.

" 6. I have been working on board the said vessel from the 19th day of June last up to the present time, with wages at the rate of 6d. per month, payable weekly. I have signed no articles of agreement. The talk on board is that an agreement will be signed before sailing.

(Signed) " EDWARD ROBERTS."

" Sworn at Liverpool, in the county of Lancaster, this 22nd day of July, 1862.

" Before me,

(Signed) " Wm. BROWN, Justice of the Peace for Lancashire
and Liverpool."

2.

" I, Robert John Taylor, of Mobile, but at present remaining temporarily at Liverpool, mariner, make oath and say as follows:—

" 1. I am a native of London, and 41 years of age. From fourteen years upwards I have followed the sea. During the last fifteen years I have been living in the Confederate States of America, principally

pally at Savannah and Mobile, and since the Secession movement I have been engaged in running the blockade. I have run the blockade six times, and been captured once.

"3. The vessels in which I have been engaged in running the blockade have sailed from Mobile, and have gone to Havana and New Orleans. I am well acquainted with the whole of the coast of the Confederate States, as I have been principally engaged since 1847 in trading to and from the Gulf ports.

"3. I came to England, after my release from Fort Warren, on the 29th of May last. I came here with the intention of going to the Southern States, as I could not get there from Boston.

"4. Mr. Rickarby, of Liverpool, a brother of the owner, at Mobile, of the vessel in which I was captured when attempting to run the blockade, gave me instructions to go to Captain Butcher at Laird's yard, Birkenhead. I had previously called on Mr. Rickarby, and told him that I wanted to go South, as the Northerners had robbed me of my clothes when I was captured, and I wanted to have satisfaction.

"5. I first saw Captain Butcher at one of Mr. Laird's offices last Thursday fortnight (namely, the 3rd of July last). I told him that I had been sent by Mr. Rickarby, and asked him if he were the captain of the vessel which was lying in the dock. I told him that I was one of the men that had been captured in one of Mr. Rickarby's vessels, and that I wanted to get South in order to have retaliation of the Northerners for robbing me of my clothes. He said that if I went with him in his vessel I should very shortly have that opportunity.

"6. Captain Butcher asked me at the interview if I was well acquainted with the Gulf ports, and I told him I was. I asked him what port he was going to, and he replied that he could not tell me then, but that there would be an agreement made before we left for sea. I inquired as to the rate of wages, and I was to get 4*l*. 10*s*. per month, payable weekly.

"7. I then inquired if I might consider myself engaged, and he replied, Yes, and that I might go on board the next day, which I accordingly did; and I have been working on board up to last Saturday night.

"8. I was at the Siege of Acre in 1840, in Her Majesty's frigate *Pique*, Captain Edward Boxer, and served on board for nine months. Captain Butcher's ship is pierce for eight broadside guns and four swivels or long-toms. Her magazine is complete, and she is fitted up in all respects as a man-of-war, without her ammunition. She is now chock-full of coals, and has, in addition to those in the hold, some thirty tons on deck.

"9. One day, whilst engaged in heaving up some of the machinery, we were singing a song, as seamen generally do, when the boatswain told us to stop that, as the ship was not a merchant-ship but a man-of-war.

(Signed) "ROBERT JOHN TAYLOR."

"Sworn at Liverpool in the county of Lancaster, this 22nd day of July, 1862.

"Before me,

(Signed) "W. J. LAMPORT, Justice of the Peace for Liverpool."

The Case and Opinion which, together with the additional depositions, were mentioned and inclosed in Mr. Squarey's letter, were as follows:—*

Case submitted to Mr. Collier, Q.C., and his Opinion thereon.

"You will receive, herewith, copies of the following affidavits in reference to a gun-boat known as No. 290, which was built by Messrs. Laird and Co. at Birkenhead, as it is believed, for the Confederate States of America, and which is now lying ready for sea in all respects in the Birkenhead docks:—No. 1. Affidavit of T. H. Dudley; No. 2. Affidavit of J. de Costa; No. 3. Affidavit of Mr. Maguire; No. 4. Affidavit of H. Wilding and M. Maguire; No. 5. Affidavit of A. S. Claro; No. 6. Affidavit of William Passmore; No. 7. Affidavit of Edward Roberts; No. 8. Affidavit of Robert John Taylor. An application has been made, on the affidavits Nos. 1 to 6 inclusive, to the Collector of Customs at Liverpool, to detain the vessel under the provisions of the Act 59 Geo. III, cap. 69; but, under the advice of the Solicitors to the Customs, the Board have declined to sanction the detention of the vessel.

"You are requested to advise the Consul for the United States at Liverpool whether the affidavits now submitted to you would disclose facts which would justify the Collector of Customs in detaining the vessel under the Act in question.

"July 23, 1862."

Opinion.

"I have perused the above affidavits, and I am of opinion that the Collector of Customs would be justified in detaining the vessel. Indeed, I should think it his duty to detain her; and that if, after the application which has been made to him, supported by the evidence which has been laid before me, he allows the vessel to leave Liverpool, he will incur a heavy responsibility, a responsibility of which the Board of Customs, under whose directions he appears to be acting, must take their share.

"It appears difficult to make out a stronger case of infringement of the Foreign Enlistment Act, which, if not enforced on this occasion, is little better than a dead letter.

"It well deserves consideration whether, if the vessel be allowed to escape, the Federal Government would not have serious grounds of remonstrance.

(Signed) "R. P. COLLIER."

"Temple, July 23, 1862."

* Appendix, vol. i, p. 196.

Part VI.

The Alabama.

The Case and Opinion, together with the additional depositions, were referred to the Assistant-Solicitor of Customs, who on the same day reported as follows:—*

"I have read the additional evidence, and I do not think that it materially strengthens the case of the applicants. As regards the opinion of Mr. Collier, I cannot concur in his views; but, advertizing to the high character which he bears in his profession, I submit that the Board might act judiciously in recommending the Lords of the Treasury to take the opinion of the Law Officers of the Crown.

(Signed) "J. O'Down.

"July 23, 1862."

Mr. Squarey's letter, with the additional depositions and the Case and Opinion, were on the same 23rd July sent by the Board of Customs to the Treasury, with a suggestion that the opinion of the Law Officers of the Crown should be taken on the matter. As soon as received at the Treasury, they were sent unofficially to Mr. Layard, who was at the time in the House of Commons. Mr. Layard, after communicating with Earl Russell, sent them at once, by his (Earl Russell's) instructions, to the Law Officers of the Crown, with the following letter:—*

Mr. Layard to the Law Officers of the Crown.

"Gencleman,

"Foreign Office, July 23, 1862.

"With reference to my letter of this morning, sending to you papers respecting the vessel stated to be preparing for sea at Birkenhead for the service of the Government of the so-styled Confederate States of North America, I am directed by Earl Russell to transmit to you a further letter from the Commissioners of Customs, inclosing additional papers respecting this vessel; and I am to request that you will take these papers into your consideration, and favour Lord Russell at your earliest convenience with your opinion as to the steps which ought to be taken by Her Majesty's Government in the matter.

"I am, &c.

(Signed) "A. H. LAYARD."

Copies of the papers sent by Mr. Squarey were on the 26th July received by Earl Russell from Mr. Adams, together with the following letter:—*

Mr. Adams to Earl Russell.

"My Lord,

"Legation of the United States, London, July 24, 1862.

"In order that I may complete the evidence in the case of the vessel now fitting out at Liverpool, I have the honour to submit to your Lordship's consideration the copies of two more depositions taken respecting that subject.

"In the view which I have taken of this extraordinary proceeding as a violation of the Enlistment Act, I am happy to find myself sustained by the opinion of an eminent lawyer of Great Britain, a copy of which I do myself the honour likewise to transmit.

"Renewing, &c.

(Signed) "CHARLES FRANCIS ADAMS."

On the 25th July a further deposition was received by the Board of Customs from Mr. Squarey, referred to the Assistant-Solicitor of Customs, and transmitted to the Treasury; from whence on Saturday, the 26th July, it was sent to the Foreign Office, and was on the same day referred to the Law Officers of the Crown, with a request that they would take it into consideration together with the other papers then before them relating to the same subject.

This further deposition was as follows:—†

Affidavit of Henry Bedden.

"I, Henry Bedden, of Hook Street, Liverpool, in the county of Lancaster, seaman, make oath, and say as follows:—

"1. I am a seaman, and have followed the sea for fifteen years. I have been boatswain on board both steamers and sailing-vessels, and belong to the Naval Reserve.

"2. About six weeks ago I was engaged by Captain Butcher (with whom I have previously sailed) as boatswain on board a vessel then in Messrs. Laird and Co.'s ship-building yard, but now lying in the Birkenhead float, and known by the name No. 290. The said Captain Butcher offered me 10/- per month, and said an agreement should be signed when we got outside. He told me that we should have plenty of money when we got home, as we were going to the Southern States on a speculation to try and get some.

* Appendix, vol. i, p. 197.

† Ibid., p. 198.

"3. The crew now on board the said vessel consists of about forty men, but I believe that she will take to sea about 100 men, all told. It is generally understood on board that she will clear for Nassau, but not make that port. The said vessel has all her stores and coals on board ready for sea. She is fitted in all respects as a man-of-war, to carry six broadside-guns and four pivots, but has no guns or ammunition on board as yet. The rules on board are similar to those in use on a man-of-war, and the men are not allowed to sing as they do on a merchantman. The call is used on board. The said vessel is of about 1,100 tons burthen.

"4. I know Captain Bullock. He has been superintending the building of the said vessel in Messrs. Laird and Co.'s yard, and is, I believe to take charge of the vessel when we get outside.

"It is generally understood on board the said vessel that she belongs to the Confederate Government.

(Signed) "HENRY REDDEN.

"Sworn this 24th day of July, 1862.

"Before me,

(Signed) "JOHN STEWART, a Justice of the Peace for the
County of Lancaster."

On this deposition the Assistant-Solicitor of Customs had, on the 25th July, reported as follows:—*

"I submit a reference to my former Reports, to the opinions expressed in which I feel still bound to adhere. So far from giving additional force to the application, the affidavit of Henry Redden appears to me to weaken it, as, after the lapse of several days since the date of the former affidavits, the applicants are confessedly unable to make out a better justification for detaining the vessel. It is, no doubt, difficult to procure satisfactory evidence in such a case; but, in the absence of at least a clear *prived facie* case there cannot exist those grounds for detaining the vessel which the Foreign Enlistment Act contemplates.

(Signed) "J. O'Down.

"Customs, July 25, 1862."

From the above statement it will have been seen that the additional papers sent by Mr. Squarey on the 23rd were on the same day referred by the Board of Customs to their official adviser and reported on by him, and were also on the same day transmitted by the Board, through the Treasury, to the Foreign Office and thence referred to the Law Officers of the Crown.

It will have been seen also that the further deposition received on the 25th was on that day reported on by the official adviser of the Board of Customs, and was on the following day referred to the Law Officers of the Crown.

On Tuesday the 29th July, the Law Officers of the Crown reported as follows on the papers which had been successively referred to them:—†

The Law Officers of the Crown to Earl Russell.

"My Lord,

"Temple, July 29, 1862.

"We are honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd July instant, stating that, with reference to our Report of the 30th ultimo, he was directed by your Lordship to transmit to us the accompanying papers, which had been received by the Board of Treasury from the Commissioners of Customs, containing further information respecting the vessel alleged to be fitting out at Liverpool for the service of the so-called Confederate States, and to request that we would take the same into our consideration, and favour your Lordship at our earliest convenience with our opinion thereon.

"The former papers on this subject were inclosed for reference if required.

"We are also honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd July instant, stating that, with reference to his letter of that date, sending to us papers respecting the vessel stated to be preparing for sea at Birkenhead, for the service of the Government of the so-called Confederate States of North America, he was directed by your Lordship to transmit to us a further letter from the Commissioners of Customs, inclosing additional papers respecting this vessel, and to request that we would take these papers into our consideration, and favour your Lordship at our earliest convenience with our opinion as to the steps which ought to be taken by Her Majesty's Government in the matter.

"We are further honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th July instant, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Board of Treasury, dated July 26, which your Lordship had received that morning, containing further information respecting the vessel stated to be fitting out at Liverpool for the service of the so-called Confederate States; and to request that we would take the same into our consideration, together with the other papers on the same subject, which were then before us.

* Appendix, vol. I, p. 198.

† Ibid., p. 200.

Part VI.

The Bahamas.

"In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

"That, in our opinion, the evidence of the witnesses who have made depositions (we allude particularly to William Pasmore, Edward Roberts, Robert John Taylor, and Henry Redden), coupled with the character and structure of the vessel, makes it reasonably clear that such vessel is intended for warlike use, against citizens of the United States, and in the interest of the (so-called) Confederate States. It is not, and cannot be, denied that the vessel is constructed and adapted as a vessel of war; being pierced for guns, the sockets for the bolts for which, Pasmore states, are already laid down, and having a magazine, shot and cannister racks on the deck, and a certain number of cannisters being actually on board. It is also stated in the Report of the Commissioners of Customs of July 1, that Messrs. Laird, the builders, do not deny that the vessel has been built for some 'foreign Government,' although they maintain apparently a strict reserve as to her actual destination, and as to the 'foreign Government,' in particular, for whose service she is intended. We do not overlook the facts that neither guns nor ammunition have as yet been shipped; that the cargo (though of the nature of naval stores in connection with war-steamer) may yet be classed as a mercantile cargo; and that the crew do not appear to have been, in terms and form at least, recruited or enrolled as a military crew. It is to be expected that great stress will be laid upon these circumstances by the owners and others who may oppose the condemnation of the vessel if seized by the officers of the Customs; and an argument may be raised as to the proper construction of the words which occur in the 7th section of the Foreign Enlistment Act, 'Equip, furnish, fit out, or arm,' which words, it may be suggested, point only to the rendering a vessel, whatever may be the character of its structure, presently fit to engage in hostilities. We think, however, that such a narrow construction ought not to be adopted and, if allowed, would fritter away the Act, and give impunity to open and flagrant violations of its provisions. We, therefore, recommend that, without loss of time, the vessel be seized by the proper authorities, after which an opportunity will be afforded to those interested, previous to condemnation, to alter the facts, if it may be, and to show an innocent destination of the ship. In the absence of any such countervailing case, it appears to us that the vessel, cargo, and stores may be properly condemned.

"We have, &c.

(Signed)

"W.M. ATHERTON.

"ROUNDELL PALMER."

On the same 29th July the Board of Customs received from Mr. Dudley's Solicitors a communication, dated the 28th, to the effect that they had every reason to believe that the vessel would sail on the 29th.* And soon afterwards the Board received from the same firm a telegraphic message stating that she had come out of dock the night before (the 28th) and had left the port that morning (the 29th).

On the 30th July the Board of Customs received from Mr. Dudley's Solicitors the following letter, which was transmitted, through the Treasury, to the Foreign Office:—†

Messrs. Duncan, Squarey, and Mackinnon to Mr. Gardner.

"Sir,

"We telegraphed you this morning that the above-named vessel was leaving Liverpool; she came out of dock last night and steamed down the river, between 10 and 11 A.M.

"We have reason to believe that she is gone to Queenstown.

"Yours obediently,

(Signed) "DUNCAN, SQUAREY, AND MACKINNON."

On the 31st July orders were sent by the Commissioners of Customs to the Collectors of Customs at Liverpool and Cork, that the vessel should be seized if she should be within either of those ports. On the morning of the 1st August similar orders were sent to the Collectors at Beaumaris and Holyhead.‡ Instructions were likewise sent to the Governor of the Bahamas, that, if she should put in at Nassau, she should be detained.§

On the 30th July, the day after the departure of the vessel, Mr. Dudley wrote as follows to the Collector of Customs at Liverpool:—||

Mr. Dudley to Mr. Edwards.

"Sir,

"Referring to my previous communication to you on the subject of the gun-boat No. 290, fitted out by Messrs. Laird, of Birkenhead, I beg to inform you that she left the Birkenhead Dock on Monday night; and yesterday morning left the river accompanied by the steam-tug Hercules.

"The Hercules returned last evening, and her master states that the gun-boat was cruising off Point Lynas; that she had six guns on board concealed below, and was taking powder from another vessel.

"The Hercules is now alongside the Woodside landing-stage, taking on board men (forty or fifty); beams, evidently for gun-carriages, and other things, to convey down to the gun-boat; a quantity of cartridges were taken on board on Friday last.

* Appendix, vol. i, p. 200.

† Ibid., p. 203.

‡ Ibid., p. 205.

§ Ibid., p. 203.

|| Ibid., p. 204.

"These circumstances all go to confirm the representations heretofore made to you about this vessel, in the face of which I cannot but regret she has been permitted to leave the port; and I report them to you that you may take such steps as you may deem necessary to prevent this flagrant violation of neutrality."

"Respectfully,
(Signed) "THOMAS H. DUDLEY, *Consul.*"

The Surveyor of Customs, by direction of the Collector, immediately went on board of the Hercules, and reported as follows:—*

Mr. Morgan to Mr. Edwards.

"Sir,
"Referring to the steamer built by the Messrs. Laird, which is suspected to be a gun-boat intended for some foreign Government, I beg to state that, since the date of my last Report concerning her, she has been lying in the Birkenhead Docks, fitting for sea, and receiving on board coals and provisions for her crew."

"She left the dock on the evening of the 28th instant, anchored for the night in the Mersey, abreast the Canning Dock, and proceeded out of the river on the following morning, ostensibly on a trial trip, from which she has not returned."

"I visited the tug Hercules this morning as she lay at the landing-stage at Woodside, and strictly examined her holds and other parts of the vessel. She had nothing of a suspicious character on board, no guns, no ammunition, or anything appertaining thereto. A considerable number of persons, male and female, were on deck, some of whom admitted to me that they were a portion of the crew, and were going to join the gun-boat."

"I have only to add that your directions to keep a strict watch on the said vessel have been carried out; and I write in the fullest confidence that she left this port without any part of her armament on board. She has not as much as a single gun or musket."

"It is said that she cruised off Port Lyndes last night, which, as you are aware, is some fifty miles from this port."

"Very respectfully,
(Signed) "E. MORGAN, *Surveyor.*"

Mr. Dudley's letter and the Surveyor's report were transmitted to the Board of Customs. Immediately on the receipt of them the following telegraphic message was sent to the Collector:—*

"July 31, 1862, 11:35 A.M.

"Examine Master of Hercules, whether he can state that guns are concealed in vessel 290, and that powder has been taken on board."

This order was executed, and the Collector replied as follows:—†

Mr. Edwards to the Commissioners of Customs.

"Honourable Sirs,

"The master of the Hercules has attended here this morning, and I beg to inclose his examination taken on oath, whereby it will be seen that the statement in the letter of the American Consul, forwarded with my Report of the 30th ultimo, is not borne out. The Board will see that the vessel has left the port. Should opportunity, however, offer, she shall be seized in accordance with the directions of the Board, as contained in the telegram of yesterday's date."

(Signed) "S. PRICE EDWARDS."

The Examination of Thomas Miller, taken on Oath by the Collector.

"I am the master of the steam-tug Hercules. I accompanied the new gun-boat built by Mr. Laird (No. 290, I believe she is distinguished by) to sea on Tuesday last. I kept in sight of her, in case the services of the steam-tug should be required, until she lay to, about a mile off the Bell Buoy, and about 14 miles from the Canning Dock. The vessel left her anchorage about 10 A.M., and I left her between 4 and 5 P.M. I saw nothing on board the ship but coals. I returned from the vessel in the evening, and got into the river about 7 P.M.; there were some of Mr. Laird's workmen and riggers on board; all of these, I believe, I brought back. The next day, Wednesday, I left the landing-stage in the river, and took with me from twenty-five to thirty men, who, I believe, were to be employed on board as part of the crew; they appeared to be all sailors or firemen. I found the vessel about 3 o'clock that afternoon in Beaumaris Bay. I put the men on board, and lay alongside till midnight. We were from three to four miles from the shore; it was a fine day. Besides the men, I put on board an anchor-stock, a piece of wood about 15 feet long, and two pieces of brass belonging to the machinery. I neither carried guns, powder, or ammunition of any kind to her, nor did I see anything of this description on board,

* Appendix, vol. I, p. 205.

† Ibid., p. 206.

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The Alabama.

nor yet being put on board. There was no vessel of any description came near the vessel while I was by her. I have never seen the American Consul to my knowledge. I never told him or any one else that they were taking powder on board the new vessel. I never was told what she was for, or what was her destination. The piece of wood which I have mentioned was not in any way fit for a gun-carriage. I thought it was intended to rest the ship's boat upon; it was planed and cut out for some purpose, if not to rest the boat upon.

(Signed) "THOMAS MILLER.

"Sworn at the Custom-house, Liverpool, 1st August, 1862."

The subjoined letters received by the Board of Customs from their officers at Beaumaris, Holyhead, and Cork show what was done by those officers in obedience to the orders of the Board:—*

Mr. Cunnah to the Secretary to the Customs, London.

"Sir,

"Custom-House, Holyhead, August 1, 1862.

"Your telegram respecting the iron steam-vessel 290 is duly to hand.

"The vessel is not, at present, within the limits of this creek. I have arranged that constant watch shall be kept, so that immediately upon her entering either of the harbours or the roadstead, she will be seized; and I am now leaving (to go along the coast) to Point Lynas and Amlwch to make further inquiries.

"I beg also to state that I have forwarded a copy of the message to the Collector of Customs, Beaumaris, and the principal coast officer at Amlwch.

"I have, &c.

(Signed) "E. R. CUNNAH, Principal Coast Officer."

Mr. Smith to Mr. Gardner.

"Sir,

"Custom-House, Beaumaris, August 2, 1862.

"On receipt of your telegram on the 1st instant, directing me to seize the steamship 290, reported to be off Point Lynas, I immediately proceeded to Amlwch and instituted inquiries, but could get but little satisfactory information. I heard that there had been a suspicious screw-steamer in Moelfra Roads on Wednesday last; that the shore boats would not be allowed alongside. I called on Mr. Pierce, chief officer of the Coast Guard, and consulted with him; I requested that he should order his boat, with four hands armed, to be at Point Lynas by 5 o'clock the next morning to meet us; I took a car at Amlwch, accompanied by Mr. Pierce and my principal coast officer, and proceeded to Point Lynas Lighthouse, and made every inquiry of the keeper. I then proceeded to the telegraph station, and on inquiry there found that the suspected vessel had not been seen by either party since Wednesday evening, when she was riding in Moelfra Roads. We then got into the Coast Guard boat and proceeded to Moelfra, and found that a large black screw steamer, or three-masted topsail yard screw steamer, with black funnel, and no name or port on her, had arrived at Moelfra Roads at 7:30 P.M. on Tuesday evening last, and came to anchor; that a fishing-boat was going alongside, and asked if they wanted any fish; the answer from the steamer was, 'No, keep off.' On Wednesday they appeared to be washing the decks and cleaning her, and about 5 P.M. a tug-boat, supposed to belong to the Old Tug Company of Liverpool, went alongside with what was supposed to be an excursion party, the passengers going on board the screw-steamer; there was music on board. The tug-boat remained alongside until about 10 o'clock P.M. the same evening, when she left; the shore people could not say whether she took the party she brought back again, because it was too dark. At 3 o'clock A.M. the following morning, viz., Thursday, the screw steamer got under weigh and proceeded to sea, and has not since been seen by any parties on the shore along the whole part of that coast.

"They held no communication whatever with the shore during her stay in Moelfra Roads.

"I am, &c.

(Signed) "W. H. SMITH, Collector."

Mr. Cassell to the Secretary to the Customs.

"Tug-boat 290, the subject of Telegram from the Secretary of Customs, 31st ultime, and Board's Order, 89, 1862.

"Sir,

"Custom-House, Cork, August 4, 1862.

"Immediately on the receipt of your telegraphic message steps were taken for the detection of the above-mentioned vessel, should she put into this port; but, up to the close of this letter, 4 P.M., she has not made her appearance.

"I am, &c.

(Signed) "F. CASSELL, Collector."

The vessel in fact sailed from the port of Liverpool on Tuesday, the 29th July, between 10 and 11 A.M. She sailed ostensibly with the intention of making a trial trip and returning to her moorings; and, in order to give an appearance of truth to this pre-

* Appendix, vol. i, pp. 207-8.

tence, a number of persons were taken on board, who, after accompanying her for a short distance, returned to Liverpool in a tug-boat. She had not been registered as a British ship, nor had she been cleared at the Custom-house for an outward voyage. She took her departure before the Report of the Law Officers had been received at the Foreign Office, and therefore before any orders for her detention had been given. Whither she was bound, or in what direction she was likely to shape her course, was unknown to the officers of the Government, as it was to Mr. Adams, Mr. Dudley, and their informants and advisers. From Mr. Dudley's communications with his own Government, it appears that on the 30th July he thought she would probably go to Nassau; afterwards he gave some credence to a rumour that she was bound for a Spanish port, and subsequently believed that she would try to reach some port in the Confederate States. Her Majesty's Government was equally without means of knowledge. It will have been seen, however, that orders to detain her were sent by the Government, not only to Liverpool, whether it was still possible that she might return, but to other ports, which (or the roadsteads adjacent to which) she might probably enter before proceeding to sea. She did in fact enter a roadstead on the coast of North Wales, which lies at a considerable distance from both Beaumaris and Holyhead, but had quitted it before the officers of Customs authorized to detain her could arrive on the spot.

It will have been seen also that when she quitted Liverpool, and up to the time of her final departure from British waters, she was entirely unarmed, and had on board no guns, gun-carriages, or ammunition. As to the persons who composed her crew, and the terms on which they were hired, and as to any other persons who may have gone to sea on board of her, Her Majesty's Government had not, through its officers at Liverpool or otherwise, any means of information. It appears, however, from depositions which have been subsequently communicated to Her Majesty's Government by Mr. Adams, and Her Majesty's Government believes it to be true, that the crew, after the ship had left Liverpool, signed Articles for Nassau or some intermediate port; that persuasion was afterwards used, whilst the ship was at sea but still under the British flag, to induce them to enlist in the naval service of the Confederate States, and that such of them as were induced to do so signed fresh Articles after the arrival of the vessel at the Azores.

Mr. Adams had, in the month of June 1862, requested Captain Craven, commanding the United States' war-steamer *Tuscarora*, to bring his ship from Gibraltar to Southampton, in order to wait for and capture the vessel should she put to sea. The *Tuscarora* came to Southampton accordingly in the beginning of July, and, on the 17th July, Mr. Adams wrote to Mr. Seward, "I have supplied to Captain Craven all the information I can obtain respecting the objects and destination of this vessel and have advised him to take such measures as may, in his opinion, be effective to intercept her on her voyage out. He will probably leave Southampton in a day or two."

The *Tuscarora*, however, lay at Southampton until the evening of the 29th July, when her Commander, after receiving two telegraphic messages from Mr. Adams informing him that the vessel had sailed, and urging him to put to sea immediately, took his departure for Queenstown. An account of the failure of the *Tuscarora* to intercept the vessel is given in the subjoined despatch addressed by Mr. Adams to Mr. Seward:—*

Mr. Adams to Mr. Seward.

"Sir,
"In my despatch of the 30th July, I brought down the narrative of the proceedings in the case of the gun-boat No. 290, to the morning of the 29th. Later in the day I sent another telegram to Captain Craven, giving further intelligence from Liverpool, urging his departure from Southampton, also that he should let me know his next movements, and cautioning him about the line of British jurisdiction. To this message the Captain immediately replied, announcing his departure at 8 o'clock, and his intention to touch at Queenstown for further information. On the 30th of July I wrote to Captain Craven, by mail to Queenstown, giving fuller details, received at half-past 11 o'clock from Mr. Dudley, touching the movements of the gun-boat off Point Lynas on that day. Early on the morning of the 31st I sent a telegram to Captain Craven, at Queenstown, apprising him that No. 290 was said to be still off Point Lynas. At about 10 o'clock P.M. of that evening I received a telegram from Captain Craven, dated at Queenstown, announcing his reception of my despatch, and his intention to await further instructions. This was answered by me early the next morning in the following words, by telegram:—

"At latest, yesterday, she was off Point Lynas; you must catch her if you can, and, if necessary, follow her across the Atlantic."

"On the same day I received by mail a note from Captain Craven, dated the 31st, announcing the receipt of my despatches, and his decision to go to Point Lynas at noon on the 1st instant.

Part VI.

The Alabama.

" Captain Craven seems to have sailed up St. George's Channel. This last movement must have been made in forgetfulness of my caution about British jurisdiction, for, even had he found No. 290 in that region, I had, in previous conversations with him, explained the reasons why I should not consider it good policy to attempt her capture near the coast. In point of fact, this proceeding put an end to every chance of his success.

" On the 5th instant I received a letter from him dated the 4th, at Queenstown, inclosing a report of his doings, addressed to the Secretary of the Navy, left open for my inspection, which I forward by this steamer, and at the same time apprising me of his intention to go round to Dublin, and await a letter from me prior to his return to his station at Gibraltar. To this I sent the following reply:—

" *Legation of the United States, London, August 6, 1862.*

" ' I will forward your letter to the Secretary of the Navy. Having in my hands sufficient evidence to justify the step, I was willing to assume the responsibility of advising you to follow the boat No. 290, and take her wherever you could find her. But I cannot do the same with other vessels, of which I have knowledge only from general report. I therefore think it best that you should resume your duties under the general instructions you have from the Department, without further reference to me.'

" It may have been of use to the Tuscarora to have obtained repairs at Southampton to put her in seaworthy condition. But had I imagined that the Captain did not intend to try the sea, I should not have taken the responsibility of calling him from his station. I can only say that I shall not attempt anything of the kind again.

" I have, &c.

(Signed) " CHARLES FRANCIS ADAMS."

Captain Craven's failure to intercept the vessel appears to have been regarded by Mr. Adams as evincing remissness and dilatoriness on the part of the former, and a want of the promptitude and judgment which ought to have been used under the circumstances of the case. It is probable indeed that he would have succeeded in intercepting her if he had used the needful activity and despatch.

For some weeks after the sailing of the vessel (which, up to the time of her departure, had continued to be known only as "the 290," from the number which she bore in the builders' yard) nothing more was heard of her. On the 1st September, 1862, a steam-ship named the Bahama which, on the 13th September, had cleared from Liverpool for Nassau, returned to the port and was entered as in ballast from Angra in the Azores. On the 3rd September, 1863, the Assistant Collector of Customs at Liverpool sent to the Board of Customs, with reference to this ship, the subjoined letter and inclosures:—*

Mr. Stuart to the Commissioners of Customs.

" Honourable Sirs,

" *Custom-House, Liverpool, September 3, 1862.*

" With reference to the Collector's Report of the 1st ultimo, I beg to transmit, for the information of the Board, the annexed Reports from the Surveyor and Assistant Surveyor, detailing some information they have obtained respecting the gun-boat No. 290. I also inclose a specification of the cargo taken out by the Bahama, and which there appears no reason to doubt was transferred to the gun-boat.

" Respectfully,

(Signed) " W. G. STUART, Assistant Collector."

(Inclosure 1.)

Mr. Hussey to Mr. Stewart.

" Sir,

" *Liverpool, Nelson Dock, September 2, 1872.*

" I beg to state that a steam-ship called the Bahama arrived here last evening from Angra (the capital of the Island of Terceira, one of the Azores) having previously cleared from Liverpool for Nassau.

" In consequence of a paragraph which appeared in the newspaper of this morning in reference to the above vessel, I deemed it expedient to send for the master, Tessier, and to inquire the nature of the cargo shipped on board in Liverpool. He states that he received sixteen cases, the contents of which he did not know, but presumed they were arms, &c., and, after proceeding to the above port, transferred the sixteen cases to a Spanish vessel, and returned to Liverpool with a quantity of coal.

" The master also states that, when off the Western Islands, he spoke the Confederate gun-boat Alabama (No. 290, built in Mr. Laird's yard at Birkenhead), heavily armed, having a 100-pounder pivot-gun mounted at her stern, which he believes is intended to destroy some of the sea-port towns in the Northern States of America.

" The above case having excited much interest in the port, I deemed it expedient to report the facts for your information.

" Respectfully,

(Signed) " J. HUSSEY, Assistant Surveyor."

(Inclosure 2.)

SPECIFICATION of Shipment per Bahama, August 11, 1862.

Part VI.
The Alabama.

				Cwts. qrs. lbs.
[B]	O P	1.—1 case containing 1 cast-iron gun	weighing	49 1 14
		2.—1 case containing 1 broadside carriage	" "	12 0 14
		3.—1 case containing rammers, sponges, handspikes, &c.	" "	2 1 14
[B]	O P	1.—1 case containing 1 cast-iron gun	" "	49 1 14
		2.—1 case containing 1 broadside carriage	" "	12 0 14
		3.—1 case containing rammers, sponges, handspikes, &c.	" "	2 0 10
[B]	O P	1 to 6.—6 cases containing 30 cast shot	" "	13 1 20
SOL				
[B]	B	1 to 6.—6 cases containing 50 cast shot	" "	17 2 6
SOL				
[B]	B	1.—1 case containing brass vent covers	" "	0 0 5
		Total weight	" "	158 1 27
		Total value, £220.		

(Inclosure 3.)

Mr. Morgan to Mr. Stewart.

" Sir,

" I beg to report, for your information, that the British steam-ship Bahama, Tessier master, which vessel cleared out for Nassau, and sailed on the 13th ultimo with nineteen cases, contents as per specification annexed, has returned to this port, and entered inwards in ballast from Angria.

" The master of her is not disposed to enter very freely into conversation upon the subject, but from others on board there appears to be no doubt that the cases above referred to were transferred to the gun-boat No. 290.

" Captain Sommes, formerly of the Confederate steamer Sumter, took passage in the Bahama, together with some fifty other persons, and they are described as being the permanent crew of the 230, now known as the Alabama.

" Respectfully,
(Signed) " E. MORGAN, Surveyor."

The Bahama had cleared for Nassau in the ordinary way, with a cargo of munitions of war, which it was probable were intended for the Confederate States. Her clearance and departure presented, so far as Her Majesty's Government is aware, no circumstances distinguishing her from ordinary blockade-runners. No information was ever given or representation made to Her Majesty's Government as to this ship, or her cargo, before she left British waters. But even had a suspicion existed that her cargo was exported with the intention that it should be used, either in the Confederate States or elsewhere out of Her Majesty's dominions, in arming a vessel which had been unlawfully fitted in England for warlike employment, this would not have made it the duty of the officers of Customs to detain her, or empowered them to do so. Such a transaction is not a breach of English law, nor is it one which Her Majesty's Government was under any international obligation to prevent.

On the 5th of September, 1862, Earl Russell received from Mr. Adams a Note inclosing a letter from Mr. Dudley, and also a deposition purporting to be made by one Redden, a seaman, who had sailed in the Alabama on her outward voyage, and had returned in the Bahama to Liverpool. The Note and its inclosures were as follows :—*

Mr. Adams to Earl Russell.

" My Lord,

" Legation of the United States, London, September 4, 1862.
" I have the honour to transmit the copy of a letter received from the Consul of the United States at Liverpool, together with a deposition in addition to the others already submitted with my notes of the 22nd and 24th of July, going to show the further prosecution of the illegal and hostile measures against the United States in connection with the outfit of the gun-boat No. 290 from the port of

* Appendix, vol. i, p. 209.

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The Alabama.

Liverpool. It now appears that supplies are in process of transmission from here to a vessel fitted out from England, and now sailing on the high seas, with the piratical intent to burn and destroy the property of the people of a country with which Her Majesty is in alliance and friendship. I pray your Lordship's pardon if I call your attention to the fact that I have not yet received any reply in writing to the several notes and representations I have had the honour to submit to Her Majesty's Government touching this flagrant case.

"Renewing, &c.
(Signed) "CHARLES FRANCIS ADAMS."

(Inclosure 1.)

Mr. Dudley to Mr. Adams.

"Sir, "I have just obtained the affidavit of the boatswain's mate who shipped in and went out in the No. 290, now called the Alabama. I inclose it to you, with bill for his services, signed by Captain Butcher. He returned on the Bahama. He states that the Alabama is to cruise on the line of packets from Liverpool to New York; that Semmes told them so. This may have been said for the purpose of misleading us. The barque that took out the guns and coal is to carry out another cargo of coal to her. It is to take it on either at Cardiff or Troon, near Greenock, in Scotland; the barque to meet the Alabama near the same island where the armament was put on board, or at least in that neighbourhood. There will be no difficulty to get other testimony if it is required.

"I am, &c.
(Signed) "THOS. H. DUDLEY.

"P.S.—There were two American vessels in sight when they parted with the Alabama, which Captain Semmes said he would take. They no doubt were taken and destroyed, the first-fruits from this vessel.

"T. H. D."

(Inclosure 2.)

Deposition of H. Redden.

"Henry Redden says:—I reside at 16, Hook Street, Vauxhall Road, and am a seaman.

"In April last I shipped as boatswain's mate of a vessel lying in Laird's Dock at Birkenhead, known as 290, and worked on board until she sailed.

"We sailed from Liverpool about 28th July; Captain Butcher was master; Mr. Law, a Southerner, was mate; Mr. Lawrence Young was purser. A Captain Bullock went on with us, but left with the pilot at Giant's Cove, near Londonderry. There were five ladies and a number of gentlemen with us as far as the Bell Buoy. We went first to Morecambe Bay, near Point Lyaus, where we anchored and remained about thirty hours. The Hercules tug brought down about forty men to us there; nothing else was then taken on board. Her crew then numbered ninety men, of whom thirty-six were sailors. She had no guns on board then, nor powder, nor ammunition. We left Morecambe Bay on the Thursday night at 12 o'clock, and steered for the North Channel. We discharged Captain Bullock and the pilot on Saturday afternoon. We first steered down the South Channel as far as Ardrosson, when we 'bent ship' and steered north. From Derry we cruised about until we arrived at Angra, eleven days after leaving Holyhead. About four days after we arrived, an English barque, —, Captain Quinn, arrived from London with six guns, two of them 98-pounder (one rifled and the other smooth-bore) pivot guns, and four 38-pounder breech guns, smooth-bore broadside guns, 200 or 300 barrels of powder, several cases of shot, a quantity of slops, 200 tons of coal. She came alongside and made fast. We were anchored in Angra Bay about a mile and a half or two miles from shore. After being there about a week, and while we were taking the guns and ammunition on board, the authorities ordered us away. We went outside and returned at night. The barque was kept lashed alongside, and we took the remainder of the guns, &c., on board as we could. While we were discharging the barque, the steamer Bahama, Captain Tessier, arrived from Liverpool. Captain Bullock, Captain Semmes, and forty men came in her. She also brought two 38-pounder guns, smooth-bore, and two safes full of money in gold. She had a safe on board before, taken on board at Birkenhead. The Bahama was flying the British flag. The Bahama towed the barque to another place in the island, and we followed. The next morning we were ordered away from there, and went out to sea until night, when we returned to Angra Bay. The Bahama, after towing the barque away the evening of her arrival, came back to the Alabama, or 290, in Angra Bay, made fast alongside of her, and discharged the guns on board of her and the money.

"The men struck for wages, and would not then go on board. There were four engineers, a boatswain, and captain's clerk named Smith, also came in the Bahama, and they were taken on board the same evening. All three vessels continued to fly the British flag the whole time. The guns were mounted as soon as they were taken on board. They were busy at work getting them and the Alabama or 290 ready for fighting while the Bahama and the barque were alongside. On the Sunday afternoon following (last Sunday week) Captain Semmes called all hands aft, and the Confederate flag was hoisted, the band playing 'Dixie's Land.' Captain Semmes addressed the men, and said he was deranged in his mind to see his country going to ruin, and had to steal out of Liverpool like a thief. That instead of them watching him he was now going after them. He wanted all of us to join him,—that he was going to sink, burn, and destroy all his enemy's property, and that any that went with him was entitled to two-twentieths prize-money; it did not matter whether the prize was sunk, or burned, or sold, the prize-money was to be paid. That there were only four or five Northern ships that he was afraid of.

He said he did not want any to go that were not willing to fight, and there was a steamer alongside to take them back if they were not willing.

"The vessel was all this time steaming to sea, with the Bahamas at a short distance. Forty-eight men, most of them firemen, refused to go, and an hour afterwards were put on board the *Alabama*. I refused to go, and came back with the rest in the Bahamas. Captain Butcher, Captain Bullock, and all the English engineers came with us, and landed here on Monday morning. When we left the Alabama she was all ready for fighting, and steering to sea. I heard Captain Semmes say he was going to cruise in the track of the ships going from New York to Liverpool, and Liverpool to New York. The Alabama never steamed while I was in her more than eleven knots, and cannot make any more. We signed articles while in Moolta Bay for Nassau, or an intermediate port. Captain Butcher got us to sign. The provisions were put on board at Laird's yard before sailing; they were for six months. When we left her she had about ninety men and eight guns mounted, three on each side and two pivots.

(Signed) "HENRY REDDEN."

" Declared and subscribed at Liverpool aforesaid, the 3rd day of September, 1862.

" Before me,
(Signed) "WILLIAM G. BATESON, Notary Public, and a Commissioner
to administer Oaths in Chancery."

Account.

August 31.—Henry Redden, at 6*l.* per month.

							£	s.	d.
One month and five days, at 6 <i>l.</i>	..	..	..	..	..	..	7	0	0
Advance, 6 <i>l.</i> ; tobacco, 1 <i>s.</i> 8 <i>d.</i>	..	..	..	..	..	..	6	1	8
Amount due ..	..	..	..	..	..	..	10	18	4

(Signed) "MATTHEW JAMES BUTCHER,
"Master of Steam-ship 290."

Earl Russell, on the 22nd September, 1862, replied as follows:—*

Earl Russell to Mr. Adams.

"Sir,

"I have the honour to acknowledge the receipt of your letter of the 4th instant, inclosing a copy of a letter from the United States' Consul at Liverpool, together with the deposition of Henry Redden, respecting the supply of cannon and munitions of war to the gun-boat No. 290. You also call attention to the fact that you have not yet received any reply to the representations you have addressed to Her Majesty's Government upon the subject.

"I had the honour, in acknowledging the receipt of your letter of the 23rd of June, to state to you that the matter had been referred to the proper Department of Her Majesty's Government for investigation. Your subsequent letters were also at once forwarded to that Department, but, as you were informed in my letter of the 28th of July, it was requisite, before any active steps could be taken in the matter, to consult the Law Officers of the Crown. This could not be done until sufficient evidence had been collected, and from the nature of the case some time was necessarily spent in procuring it. The Report of the Law Officers was not received until the 29th of July, and on the same day a telegraphic message was forwarded to Her Majesty's Government, stating that the vessel had sailed that morning. Instructions were then dispatched to Ireland to detain the vessel should she put into Queenstown, and similar instructions have been sent to the Governor of the Bahamas in case of her visiting Nassau. It appears, however, that the vessel did not go to Queenstown, as had been expected, and nothing has been since heard of her movements.

"The officers of Customs will now be directed to report upon the further evidence forwarded by you, and I shall not fail to inform you of the result of the inquiry.

"I am, &c.
(Signed) "RUSSELL."

Mr. Adams' Note, with its inclosures, having been referred to the Commissioners of Customs, they, on the 25th September, 1862, reported as follows:—†

The Commissioners of Customs to the Lords Commissioners of the Treasury.

"Custom-House, September 25, 1862.

"Your Lordships having, by Mr. Arbuthnot's letter of the 16th instant, transmitted to us, with reference to Mr. Hamilton's letter of the 2nd ultimo, the inclosed communication from the Foreign Office, with copies of a further letter, and its inclosures, from the United States' Minister at this Court respecting the supply of cannon and munitions of war to the gun-boat No. 290, recently built at

* Appendix, vol. i, p. 211.

† Ibid., p. 213.

morning. In the morning we went alongside the Alabama, and some small cases and a safe containing money was passed into the Alabama from our ship, and we then parted and anchored a little distance from her, and the barque *Agrrippina* went and discharged the remainder of her cargo into the Alabama. During this time Captain Semmes and Captain Bullock were going backwards and forwards to the Alabama, but would not let any of the officers go. On Sunday, the 24th of August, Captain Semmes came on board the Bahama, and called us under the bridge, he himself and the officers standing on the bridge; he addressed us and said, 'Now my lads, there is the ship' (pointing to the Alabama); 'she is as fine a vessel as ever floated; there is a chance which seldom offers itself to a British seaman, that is, to make a little money. I am not going to put you alongside of a frigate at first; but after I have got you drilled a little, I will give you a nice little fight.' He said, 'There are only six ships that I am afraid of in the United States' Navy.' He said, 'We are going to burn, sink, and destroy the commerce of the United States; your prize-money will be divided proportionately according to each man's rank, something similar to the English navy.' Some of the men objected, being Naval Reserve men. Captain Semmes said, 'Never mind that, I will make that all right; I will put you in English ports where you can get your book signed every three months.' He then said, 'There is Mr. Kell on the deck, and all those who are desirous of going with me let them go aft, and give Mr. Kell their names.' A great many went aft, but some refused. A boat came from the Alabama, and those who had agreed to go went on board. Captain Semmes and the officers went on board. Mr. Low, the Fourth Lieutenant, then appeared in uniform, and he came on board the Bahama, endeavouring to induce the men to come forward and join, and he succeeded in getting the best part of us. I was one who went at the last minute. When I got on board the Alabama, I found a great number of men that had gone on board of her from Liverpool. Captain Semmes then addressed us on board the Alabama, and Captain Butcher was there also, who had taken the vessel out. Captain Semmes said he hoped we should all content ourselves and be comfortable one amongst another; but any of you that thinks he cannot stand to his gun I don't want. He then called the purser, and each as agreed to serve signed articles on the companion-hatch, and on signing the men received either two months' pay in advance, or one months' wages and a half-pay note. I took a month's wages and a half-pay note for £1. 10s. a month in favour of my wife, Martha Latham, 19, Wellington Street, Swindon; the note was drawn on Fraser, Trehorn, and Co., of Liverpool, but it was paid at Mr. Klingender's in Liverpool; the note was signed by Captain Semmes, Yonge, who was the Paymaster, and Smith, the Captain's clerk. I sent £1. and this half-pay note ashore by Captain Bullock, and he forwarded it with a letter to my wife.

"3. Captain Bullock, on the passage out, and after we arrived at Terceira, used arguments to induce us to join the Alabama. On several occasions he advised us, and urged the men to join.

"4. As soon as the men who had consented to go had all signed articles, the English ensign which the Alabama had been flying, was pulled down, and the Confederate flag hoisted, and a gun was fired. The men who declined joining left the ship with Captain Bullock and Butcher for the Bahama, and we proceeded, under the command of Captain Semmes.

Her Majesty's Government neither affirms nor denies the truth of the statements of these persons, some of which statements, however, it has reason to believe to be incorrect. But Her Majesty's Government believes it to be true that the vessel known at first as the 290, and afterwards as the Alabama, having left Her Majesty's dominions unarmed, was armed for war after arriving at the Azores, either wholly in Portuguese waters, or partly in Portuguese waters and partly on the high seas; that her crew were, after her arrival at the Azores, hired and signed Articles for service in the Confederate Navy, either in Portuguese waters or on the high seas; that Captain Semmes took command of her after she arrived at the Azores; and that, after she had been armed as aforesaid, she was commissioned (being then out of the dominions of Her Britannic Majesty) as a ship-of-war of the Confederate States. Her Captain and officers were, as Her Majesty's Government believes, all American citizens, and were at the time commissioned officers in the Confederate service, except the Assistant-Surgeon, who was a British subject. John Low, one of the Lieutenants, who has been stated to have been an Englishman, was, as Her Majesty's Government believes, a citizen of the State of Georgia. Of the common seamen and petty officers Her Majesty's Government believes that a considerable number were British subjects, who were induced by Captain Semmes (himself an American citizen) to take service under him; but the ship's company was afterwards largely increased by the addition of many American seamen, drawn from the crews of United States' vessels captured by the Alabama during her cruise. In this way her crew, which is stated to have numbered about 84 men when the ship left the Azores, had increased to nearly 150 when she arrived at Martinique.

In the above-mentioned deposition of John Latham, which was received by Her Majesty's Government from Mr. Adams on the 13th January, 1854, it was stated that a considerable number of the seamen who had been induced to take service in the ship belonged to the Royal Naval Reserve; and a list or schedule was given, purporting to be a list of the crew, and to specify the names of nineteen such seamen. Inquiries were therupon made at the Admiralty with reference to the matter; and the subjoined letters, addressed by the Secretary of that Department to one of the Under-Secretaries of State for Foreign Affairs, show both what steps had been previously taken by the Lords

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The Alabama.

Commissioners of the Admiralty, and what was afterwards done in consequence of such inquiries:—*

The Secretary to the Admiralty to Mr. Hammond.

“Sir,

“With reference to your letter of the 21st instant, relative to the statement that many of the crew of the late Confederate ship Alabama were Naval Reserve men, I am commanded by my Lords Commissioners of the Admiralty to acquaint you, for the information of Earl Russell, that the only men who were suspected of having joined Confederate vessels, and who were ascertained to be improperly absent, were discharged from the Naval Reserve force on the 25th January last.

“My Lords, however, concur with his Lordship that it will be desirable to ascertain whether any of the men on board the Alabama did belong to the Naval Reserve, and they will take the necessary steps as requested.

“Admiralty, June 24, 1864.

“I am, &c.
(Signed) “C. PAGE.”

The Secretary to the Admiralty to Mr. Hammond.

“Sir,

“In reply to your letter of the 22nd instant, respecting the Naval Reserve men who are said to form part of the crew of the Confederate steam-ship Alabama, I am commanded by my Lords Commissioners of the Admiralty to acquaint you, for the information of Earl Russell, that only three of the nineteen men described in the printed list as Naval Reserve men can be identified, viz., David Bosch, Peter Hughes, and Michael Mars; and, of those three, the last (Mars) has been already discharged, in consequence of having joined the Alabama, as will be seen by the inclosed copy of a Report from the Registrar-General of Seamen, who has been directed to make inquiries on the subject.

“I return the printed list of the crew, which accompanied your letter, with the Registrar-General's notations against the names.

“I am, &c.
(Signed) “C. PAGE.”

Mr. Mayo to the Commodore Controller-General of the Coast Guard.

“Sir,

“In accordance with the request contained in your letter of the 25th instant, I beg to acquaint you, for the information of the Lords Commissioners of the Admiralty, that the register books of the Royal Naval Reserve have been searched, with a view of ascertaining whether the nineteen men described in the annexed list as forming part of the crew of the Alabama belong to the Royal Naval Reserve, and the following is the result of the investigation:—

“A seaman of the name of David Bosch (R.N.R. No. 11,919) is reported to have been at Liverpool on the 2nd of October, 1862, and a seaman of the name of Peter Hughes (R.N.R. No. 10,849) is reported to have been discharged from the Great Eastern at Liverpool, on the 16th June, 1862. As no subsequent account has been received of either of these Naval Reserve men, it is possible that they may be the same men as David Bosch and Peter Hughes described in the accompanying list of the crew of the Alabama; but of this I have no proof.

“A seaman of the name of Michael Mars formerly belonged to the Royal Naval Reserve, but he was discharged from the force, in consequence of having joined the Alabama. With regard to the remaining sixteen men, who are said to be members of the Royal Naval Reserve, I have to state that I have not been able to trace them in our books by the names given. No persons of the names of William Brinton, Brent Johnson, Samuel Henry, John Duggan, Joseph Connor, William Purdy, Malcolm Macfarlane, John Emory, William Novis, and William Hearne, have been enrolled in the Reserve, and I am unable to identify as members of the Royal Naval Reserve the seamen serving on board the Alabama in the following names, for the reasons given:—William Crawford, native and resident of Aberdeen, and not of Liverpool; James Smith, thirty-two enrolled of this name; John Neil, sailed in Goldfinch, 11th April, 1862—no account since; Thomas Williams, seventeen enrolled of this name; Robert Williams, six enrolled of this name.

“I have, &c.
(Signed) “F. MAYO, Registrar-General.”

The Secretary to the Admiralty to Mr. Hammond.

“Sir,

“I am commanded by my Lords Commissioners of the Admiralty to acquaint you, for the information of Earl Russell, that the Board of Trade have succeeded in identifying three of the late Confederate ship Alabama's men as Naval Reserve men, viz., Thomas McMillan, Peter Hughes, Charles Seymour, and that their Lordships have ordered them to be dismissed from the force.

“Admiralty, July 27, 1864.

“I am, &c.
(Signed) “W. G. ROMAINE.”

* Appendix, vol. i, p. 237.

† Ibid., p. 233.

‡ Ibid., p. 237.

With respect to the greater number of the names entered in the aforesaid schedule, it was found that no persons bearing those names had in fact been enrolled in the Naval Reserve.

The subsequent history of the Alabama, so far as it is known to Her Britannic Majesty's Government, from the Reports of its Colonial officers and from other sources, is as follows.

On or about the 18th November, 1862, the Alabama arrived at Martinique, and anchored in the harbour of Fort de France, where she received permission from the Governor to remain for such time as she needed, and to land her prisoners. Her Britannic Majesty's Consul at St. Pierre, in a Report made at the time, stated that shortly before her arrival, suspecting that preparations were being made for her to coal there, he had communicated the grounds of his belief to the Governor. The following is an extract from the Report:—

"I next deemed it proper to acquaint the Governor with what I had just learned. He did not seem much surprised, and observed that, if the Alabama came into port, he would act exactly as he had done on a former occasion in the case of the Sumter, when the French Government had altogether approved of the measures he had taken in regard to that vessel."

The Alabama remained at Fort de France till the evening of the 19th, when she put to sea, eluding the pursuit of the United States' war-steamer San Jacinto, which was keeping watch for her within view of the shore, but outside of the territorial waters of the island.

On the 20th January, 1863, the Alabama came into the harbour of Port Royal, Jamaica, and her Commander applied for leave to land the prisoners he had made in his recent engagement with the United States' war-steamer Hatteras. This application was granted by the Lieutenant-Governor, in the following letter to Commodore Dunlop, the Senior Naval Officer at the port:—*

Lieutenant-Governor Eyre to Commodore Dunlop.

"Sir, "King's House, January 21, 1863.
"I have the honour to acknowledge the receipt of your letter of the 21st instant, and beg to acquaint you, in reply, that, having consulted with the Attorney-General, I do not see any grounds for objecting to the landing of the prisoners taken by the Alabama.

"Common humanity would dictate such a permission being granted, or otherwise fever or pestilence might arise from an overcrowded ship.

"Probably the best course would be to reply to Captain Semmes' application, that this Government will not interfere with his landing any persons he may think proper.

"Of course, once landed, no persons could be re-embarked against their will from British soil.

"I have, &c.
(Signed) "E. EYRE."

The following letters, addressed by Commodore Dunlop to the Vice-Admiral in command on the West Indian Station, contain an account of what occurred in relation to the Alabama while she remained at Port Royal:—

Commodore Dunlop to Vice-Admiral Sir A. Milne.†

"Sir, "Aboukir, at Jamaica, January 23, 1863.
"I have the honour to inform you that, on the evening of the 20th, a screw-steamer, apparently a man-of-war, was seen off this port about sunset, under French colours. After dark the vessel entered the harbour, and upon being boarded proved to be the screw gun-vessel Alabama, under the so-called Confederate States' flag.

"2. On the morning of the 21st her commander, Captain Semmes, called on me and asked for permission to land 17 officers and 101 men, the crew of the late United States' gun-vessel Hatteras, which had engaged the Alabama twenty-five miles south-east of Galveston, Texas, during the night of the 11th January, and was sunk. The action, according to Captain Semmes' account, lasted from 13 to 15 minutes, when the Hatteras, being in a sinking state, ceased firing, and the crew were removed on board the Alabama, which there was just time to effect before the Hatteras went down.

"3. In answer to Captain Semmes' application to land his prisoners, I replied that I had no authority to give such permission, but would immediately inform his Excellency the Lieutenant-Governor of his request, and let him know the answer I received as soon as possible.

"4. I have the honour to annex copies of my correspondence with his Excellency and his reply, relative to landing the prisoners, also copy of his Excellency's letter to me, to notify to the Captain of

* Appendix, vol. i, p. 265.

† Ibid., p. 264.

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the Alabama the instructions contained in the 3rd paragraph of Earl Russell's despatch to the Duke of Newcastle, and my reply thereto, as well as a copy of my letter to Captain Semmes, inclosing a copy of the 3rd and 4th paragraphs of the despatch referred to above.

" 5. Captain Semmes then stated that he had six large shot-holes at the water-line, which it was absolutely necessary should be repaired before he could proceed to sea with safety, and asked permission to receive coal and necessary supplies. The necessity of the repairs was obvious, and I informed Captain Semmes that no time must be lost in completing them, taking in his supplication, and proceeding to sea in exact conformity with the spirit of Earl Russell's despatch. Captain Semmes gave me his word of honour that no unnecessary delay should take place, adding, 'My interest is entirely in accordance with your wishes on this point, for if I remain here an hour more than can be avoided I shall run the risk of finding a squadron of my enemies outside, for no doubt they will be in pursuit of me immediately.'

" Owing to the delay in receiving the Lieutenant-Governor's answer to my letter relative to landing the prisoners from Spanish Town, it was not until the evening of the 21st that the permission to do so reached Captain Semmes, and too late for them to be landed that night. The crowded state of the vessel previous to the landing of the prisoners on the morning of the 22nd made it difficult to proceed with the necessary repairs, and no doubt caused some unavoidable delay. As soon as these repairs are completed, the Alabama will proceed to sea.

" I am, &c.
(Signed) " HUGH DUNLOP."

*Commodore Dunlop to Vice-Admiral Sir A. Milne.**

" Sir,

" *Alawakir, at Jamaica, February 7, 1863.*

" In order to anticipate any exaggeration or false reports that may be circulated in the American newspapers or otherwise, relative to the visit of the Confederate gun-vessel Alabama at this port, and so to save unnecessary correspondence, I have the honour to state herein, for your information, the whole of the circumstances attending the visit of that vessel from her arrival to the time of her departure from Jamaica.

" 2. As reported in my letter of the 23rd January, the Alabama anchored in this port after dark on the evening of the 20th. She commenced repairing the damages received in action with the Federal gun-vessel Hatteras, the next morning, at the same time receiving a supply of provisions and coal.

" 3. The Lieutenant-Governor's permission for the prisoners to land not having reached me until the evening of the 21st, they did not leave the Alabama until the morning of the 22nd, when they proceeded to Kingston in shore boats, which were provided by the United States' Consul.

" 4. The Commander of the late United States' gun-vessel Hatteras did not call on me, or send me any communication whatever during his stay in this island.

" 5. At 9:30 A.M. on the morning of the 21st, the Captain of the Jason waited on me to ask if I had any objections to officers of the ships in harbour going on board the Alabama? to which I answered that, as it might be hurtful to the feeling of the officers and men prisoners on board the Alabama, on no account was any one from any of Her Majesty's ships to visit that vessel until after all the prisoners were landed.

" 6. It having subsequently been reported to me that some officers had been on board the Alabama prior to the landing of the prisoners, I called on the Captains and Commanders of the different ships to report to me in writing whether any officer under their command had acted contrary to my order. I found from the Reports that four officers of the Challenger, four officers of the Cygnet, and one of the Greyhound had gone on board the Confederate gun-vessel before my order was made known.

" I regret that the Captains and Commanders of these ships should have given permission to their officers previous to communicating with me on the subject, though it was done entirely from thoughtlessness, forgetting that there could be any objection to it. The Commander of the Cygnet was in hospital, and therefore is not responsible for the officers of that ship going on board the Alabama.

" 8. I annex a copy of a Report from Commander Hickley relative to the use of 'Dixie's Land' having been played on board the Greyhound shortly after the Alabama anchored, and copy of a correspondence between him and Lieutenant-Commander Blake, of the United States' Navy, relative to the same. After the explanation that took place, Lieutenant-Commander Blake expressed himself to Commander Hickley as perfectly satisfied that no British officer or gentleman would have been guilty of insulting gallant men suffering from a misfortune to which the chances of war render all liable. I severely reprimanded the Lieutenant of the Greyhound who ordered the Confederate air to be played, and he expressed his regret for having done so.

" 9. The fractures made by six large shot or shell near the waterline of the Alabama required extensive repairs, which could not be completed by the unskillful workmen hired here before late in the afternoon of the 25th, and the Alabama sailed at 8:30 P.M. of the same evening.

" 10. In conclusion I have only to state that the Confederate vessel was treated strictly in accordance with the instructions contained in Earl Russell's letter of the 31st January, 1862, and exactly as I shall act towards any United States' man-of-war that may hereafter call here.

" 11. Two United States' ships of war, the Richmond and Powhatan, arrived here in 1861, coalled and provisioned, and remained in port, the Richmond four days, and the Powhatan three days; the San Jacinto was also here, and remained four hours.

" I have, &c.
(Signed) " HUGH DUNLOP."

* Appendix, vol. i, p. 268.

On the 11th May, 1863, the Alabama arrived at Bahia, having previously touched at the Brazilian Island of Fernando de Noronha. About the same time the Florida and Georgia, Confederate war-steamer, were likewise in Brazilian ports, where they were permitted to purchase coal and provisions and to refit.

The United States' Minister at Rio de Janeiro hereupon wrote in very warm terms to the Brazilian Minister of Foreign Affairs, arguing that all the three vessels were piratical, and should be treated as such; affirming further that the Alabama, whilst at Fernando de Noronha, had violated the neutrality of Brazil by making prize of United States' vessels within the territorial waters of the Empire; insisting that it was the duty of the Emperor's Government to capture her; and threatening that, if this were not done, the Brazilian Government should be held responsible by the Government of the United States. In a despatch dated the 21st May, 1863, he wrote as follows:—*

"The Georgia lands prisoners avowedly taken from a captured American ship, and asks permission of the Governor of Bahia to coal and lay provisions, and the permission is cordially granted.

"The Florida lands her prisoners, officers, crews, and passengers of American vessels captured and burned, and not only asks and receives permission to coal and purchase provisions, but, further, asks to be allowed whatever time is necessary to repair her engine and *refit* for her work of destruction; and, in defiance of the solemn and most earnest protest of the Consul of the United States, this privilege is accorded to her by the Governor of Pernambuco, from a desire *not to diminish his means of defence and security!*

"The Alabama goes into Bahia, and does not even ask permission to remain. She arrived on the 11th, and was still there when the Guinne sailed on the 14th. The Consul of the United States protested against her presence, and demanded that she should be seized and held subject to the orders of the Brazilian Government, for having destroyed American property in Brazilian waters, for which the Government of the United States will hold Brazil responsible, if, now that the opportunity presents, the authorities do not vindicate the sovereignty of Brazil and capture the pirate. The Governor of Bahia sends to the United States' Consul the communication of the Governor of Pernambuco to the captain of the pirate, complaining of his piracy, charging him with a violation of Brazilian sovereignty, and ordering him, in consequence of such disgraceful conduct, to leave the waters of Brazil within twenty-four hours. The Governor of Bahia thus demonstrates that he knows the piratical character of this vessel, and is familiar with her violation of the sovereignty of Brazil by destroying American vessels within the waters of that empire. He knows, too, that the Imperial Government, by its acts, had proclaimed this pirate guilty of violations of its sovereignty, and ordered him to leave their port of Fernando Noronha; and yet he deliberately permits him to enter the port of Bahia, refuses to regard the protest of our Consul, and, at the last account, had harboured him four days without pretending that his presence was not acceptable!

"Thus, at this moment, the ports of Brazil are made harbours of refuge and places of resort and departure for three piratical vessels, avowedly designed to prey upon the commerce of the United States. The waters of Brazil are violated with impunity in this piratical work, and after the Imperial Government had admitted and declared its indignation at such violation of sovereignty, the guilty party is received with hospitality and friendship by the Governor of Bahia, and instead of being captured and imprisoned, and his vessel detained, he is fitted, and supplied with the necessary provisions and coal, to enable him to continue his depredations upon American commerce. The wharves and streets of Bahia and Pernambuco have been, for weeks past, swarmed with American sailors and passengers from merchantmen trading with Brazil, which have been captured, and the persons on board robbed, by the pirates of the Alabama, Florida, and Georgia, and they have been compelled, in the ports of a friendly nation, to witness their clothing and jewellery, and even family reliques, sold on the wharves and in the streets of Bahia and Pernambuco, by their piratical captors, at a tenth of their value; while the piratical vessels and all on board were received and treated as friends, and supplied with the necessary materials to continue their nefarious practices. The scenes which history informs us were rife in the seventeenth century, in the islands of the West Indies, are now being enacted in this the nineteenth century, in the ports of Brazil, and that through no fault of the Imperial Government—which has already done its whole duty as rapidly as circumstances have permitted—but because the Governors of Pernambuco and Bahia, in their sympathy with piracy and pirates, have neglected their duty to Brazil, and brought discredit upon the civilization of the age.

"Your Excellency is aware that the facts in connection with the presence of these piratical vessels in the ports of Brazil are even stronger than in this hasty communication they are presented; and, therefore, the Undersigned will not for a moment doubt but the Imperial Government will promptly visit upon the offending Governors the punishment they have so richly merited. But it appears to the Undersigned that the Government of Brazil has still another duty to perform, itself, to the Government of the United States, to humanity, and to the civilization of the age, and that is the capture of the Alabama whenever she enters a Brazilian harbour. That piratical vessel has violated the sovereignty of Brazil by destroying the vessels of a friendly nation within the waters of the Empire. The Government of Brazil, by its acts, has proclaimed this fact; and, most assuredly, if, when it has the power to do so, it does not capture and detain the offender, it makes itself a party to his acts, and compels the Government of the United States not only to look to Brazil for compensation for injuries done to its commerce within its waters, but also to hold Brazil responsible for permitting this pirate to proceed in his depredations upon American commerce.

* Appendix, vol. i, p. 280.

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The Alabama.

"The Undersigned does not visit upon the Imperial Government the conduct of its Governors towards the Florida and Georgia, well knowing that it will, as heretofore, do its duty in the premises. But the case of the Alabama is a very different one. She has violated the neutrality, and outraged the sovereignty of Brazil, by capturing and burning American vessels in Brazilian waters; and if, when Brazil possess the ability, and the opportunity offers, she does not take possession of her, assuredly, the Government of Brazil assumes the responsibility of her acts, and the United States will be compelled to look for redress to Brazil, as she did to Portugal in the case of the General Armstrong."

The course taken by the United States' Minister was approved by his Government.

The Minister of Foreign Affairs for the Empire of Brazil replied as follows to the complaints of the Minister of the United States:—*

The Marquis d'Abraantes to Mr. Webb.

"Ministry of Foreign Affairs,

"Rio de Janeiro, May 23, 1863.

(Translation.)

"I hasten to acknowledge the reception of the note which, under date of the 21st instant, Mr. James Watson Webb, Envoy Extraordinary and Minister Plenipotentiary of the United States at this Court has done me the honour to address to me, with a view of calling my attention to a serious violation of neutrality which has been perpetrated, and is now being perpetrated, by two Representatives of the Imperial Government in the ports of Pernambuco and Bahia.

"Mr. Webb, in referring to the proceedings of the Presidents of said provinces towards the steamers of the Confederate States which come into their ports, accuses said Presidents, and complains of their having afforded hospitality to those steamers, and of having permitted them to make repairs, to receive provisions, and to land merchandise or vessels which they had captured.

"Mr. Webb bases his complaints on a series of acts which he enumerates, and which he characterizes as violative of the neutrality which the Government of His Majesty the Emperor imposes on itself in the deplorable contest of the American Union.

"The affair in question is undoubtedly grave and important, and the Imperial Government gives to the authorized language of Mr. Webb all the consideration which is due to it.

"But for this very reason, and Mr. Webb will certainly acknowledge it, the Imperial Cabinet is under the unavoidable necessity of proceeding in such a delicate matter with the greatest discretion and prudence, in order to observe religiously the position which it has assumed since the manifestation of the first events which tended to the result of a division of the United States.

"The position to which I allude Mr. Webb perfectly understands, as he also understands the principles on which it rests, since they were laid down in a Circular which was issued by the Imperial Government to its delegates in the provinces, under date of the 1st of August, 1861.

"Conforming to the rules generally admitted among civilized nations, the Imperial Government in that Circular prescribes the practical mode of rendering effective the neutrality which it imposes on itself.

"Without at present confirming or denying the acts as set forth by Mr. Webb, and without entering into an appreciation of the observations with which he accompanies the narration of them, what I can at once most positively declare to him is, that the Government of His Majesty the Emperor is firmly resolved to maintain, and to cause to be respected, the neutrality, in the terms in which it has declared it assumed it, and what is important to declare, that it is not disposed to allow this neutrality to be violated in any way by those interested in the contest, and still less by the delegates of the Government itself.

"Of the sincerity of this declaration Mr. Webb has an indisputable proof in my note of the 7th instant relative to the steamer Alabama, of the Confederate States, as in it I voluntarily hastened to bring to the knowledge of Mr. Webb not only the official communications which the Imperial Government has received in regard to the acts committed at Pernambuco by that steamer, but also the resolutions adopted by the Government to approve entirely of the proceedings on that occasion of the President referred to, and to resort to the necessary measures to repress the abuses of the Captain of the Alabama, and cause the neutrality of the Empire to be religiously observed.

"Therefore Mr. Webb, certain as he must be of the intentions of the Imperial Government, and of all the respect which this Government pays to his word, will assuredly not be surprised that, before coming to a final decision on the important acts which form the subject of the note with which I am now occupied, the Imperial Government should hear what their delegates in the provinces have to relate, and should strive scrupulously to verify their exactness.

"By the French packet which leaves this port on the 25th instant, the Imperial Government sends the most positive and conclusive orders to the Presidents of Bahia and Pernambuco that, without loss of time, they will circumstantially report in regard to each of the acts alleged in the note of Mr. Webb, of which he gives to them full information.

"And, as soon as the Reports referred to shall arrive, Mr. Webb may rely that the Imperial Government will not hesitate to put forth its hand to the means necessary to render effective the neutrality which it imposes on itself, provided it has been violated, and to leave beyond all doubt the fairness of its proceeding.

"Flattering myself that this brief answer will transquillize Mr. Webb, I profit by the occasion, &c.
(Signed) *"MARQUIS D'ABRAANTES,"*

* Appendix, vol. i, p. 283

The Government of Brazil in this Note adhered to the position which it had assumed at the commencement of the war by its Circular of 1st August, 1861. The Circular contained the following passage:—*

"The Confederate States have no recognized existence; but, having constituted a distinct Government *de facto*, the Imperial Government cannot consider their naval armaments as acts of piracy, nor refuse them, with the necessary restrictions, the character of belligerents which they have assumed."

It being alleged, however, and (as it appears) proved, that the Alabama had made prizes within the territorial waters of the Island of Fernando de Noronha, and that the Governor of that island had taken no steps to prevent this or protest against it, he was deprived of his office by the President of the Province; and this act was approved by the Brazilian Government. The Alabama remained in the port of Bahia for eight or nine days.

Some further correspondence passed between Mr. Webb and the Brazilian Minister of Foreign Affairs, in the course of which the latter vindicated the conduct of the Presidents of the Provinces of Pernambuco and Bahia, and declared that, since Brazil had originally recognized the Confederate States as belligerents, and had not withdrawn that recognition, and the "Florida," "Georgia," and "Alabama" bore the flag and commission of those States, these vessels had been rightly treated as belligerent vessels of war. He informed Mr. Webb, however, that since the "Alabama" appeared to have violated the neutrality of Brazil by using Rata Island as a base of hostile operations, she would not in future be admitted into any Brazilian port.†

On or about the 29th July, 1863, the Alabama arrived at Saldanha Bay, on the southwest coast of Africa, and in the vicinity of Cape Town.

The Consul of the United States at Cape Town, on the 4th August, 1863, addressed the following letter to Sir Philip Wodehouse, Governor of the Cape Colony:—‡

"United States' Consulate, Cape Town, August 4, 1863.

" His Excellency Sir Philip E. Wodehouse.

" Sir,

" From reliable information received by me, and which you are also doubtless in possession of, a war-steamer called the Alabama is now in Saldanha Bay being painted, discharging prisoners of war, &c.

" The vessel in question was built in England, to prey upon the commerce of the United States of America, and escaped therefrom while on her trial trip, forfeiting bonds of 20,000*£*, which the British Government exacted under the Foreign Enlistment Act.

" Now, as your Government has a Treaty of Amity and Commerce with the United States, and has not recognized the persons in revolt against the United States as a Government at all, the vessel aforesaid to should be at once seized and sent to England, from whence she clandestinely escaped. Assuming that the British Government was sincere in exacting the bonds, you have doubtless been instructed to send her home to England, where she belongs. But if, from some oversight, you have not received such instructions, and you decline the responsibility of making the seizure, I would most respectfully protest against the vessel remaining in any port of the Colony another day. She has been at Saldanha Bay four [six] days already, and a week previously on the coast, and has forfeited all right to remain an hour longer by this breach of neutrality. Painting a ship does not come under the head of 'necessary repairs,' and is no proof that she is unworthy; and to allow her to visit other ports after she has set the Queen's Proclamation of neutrality at defiance, would not be regarded as in accordance with the spirit and purpose of that document.

" Yours, &c.

(Signed) " WALTER GRAHAM, United States' Consul."

The statement in this letter that bonds had been exacted and forfeited was entirely erroneous. No such bonds had been given or forfeited, nor could they have been required by British law. The Consul's letter was answered as follows:—§

" Sir,

" Colonial Office, August 5, 1863.

" I am directed by the Governor to acknowledge the receipt of your letter of yesterday's date, relative to the Alabama.

" His Excellency has no instructions, neither has he any authority, to seize or detain that vessel; and he desires me to acquaint you that he has received a letter from the Commander, dated the 1st instant, stating that repairs were in progress, and as soon as they were completed he intended to go to sea. He further announces his intention of respecting strictly the neutrality of the British Government.

" The course which Captain Semmes here proposes to take is, in the Governor's opinion, in conformity with the instructions he has himself received relative to ships of war and privateers belonging to the

* Appendix, vol. I, p. 284.

† Ibid., pp. 288-300.

‡ Ibid., p. 300.

§ Ibid., p. 301.

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United States and the States calling themselves the Confederate States of America visiting British ports.

"The reports received from Saldanha Bay induce the Governor to believe that the vessel will leave that harbour as soon as her repairs are completed; but he will, immediately on receiving intelligence to the contrary, take the necessary steps for enforcing the observance of the rules laid down by Her Majesty's Government.

"I have, &c.
(Signed) "L. ADAMSON,
"For the Colonial Secretary."

The facts which occurred, and the questions which arose, whilst the Alabama remained within the limits of the Cape Colony, are stated in the following despatch, addressed by the Governor to Her Majesty's Secretary of State for the Colonies:—*

Governor Sir P. Wodehouse to the Duke of Newcastle.

(Extract.)

"Government House, Cape Town, August 19, 1863.

"I beg to take this opportunity of making your Grace acquainted with what has occurred here in connection with the visit of the Confederate States' steamer Alabama.

"On Tuesday the 4th instant I received a letter from the Commander of that vessel, dated the 1st August at Saldanha Bay, announcing his having entered that bay with a view to effecting certain repairs, and stating that he would put to sea as soon as they were completed, and would strictly respect our neutrality.

"When this intelligence was received the United States' Consul called on me to seize her, or at any rate to send her away instantly; but as the vessel which brought the news reported that the Alabama was coming immediately to Table Bay, I replied that I could not seize her, but would take care to enforce the observance of the neutral regulations.

"On the next day, about noon, it was reported from the signal station that the Alabama was steering for Table Bay from the north, and that a Federal brig was coming in from the westward; and soon after, that the latter had been captured and put about. A little after 2 P.M. the United States' Consul called to state that he had seen the capture effected within British waters; when I told him he must make his statement in writing, and an investigation should be made. I also, by telegram, immediately requested the Naval Commander-in-chief to send a ship of war from Simon's Bay. The Alabama, leaving her prize outside, anchored in the bay at 3:30 P.M. when Captain Semmes wrote to me that he wanted supplies and repairs, as well as permission to land thirty-three prisoners. After communicating with the United States' Consul, I authorized the latter, and called upon him to state the nature and extent of his wants, that I might be enabled to judge of the time he ought to remain in port. The same afternoon he promised to send the next morning a list of the stores needed, and announced his intention of proceeding with all despatch to Simon's Bay to effect his repairs there. The next morning (6th August) the Paymaster called on me with the merchant who was to furnish the supplies, and I granted him leave to stay till noon of the 7th.

"On the night of the 5th Her Majesty's ship *Valorous* had come round from Simon's Bay. During the night of the 6th the weather became unfavourable; a vessel was wrecked in the bay, and a heavy sea prevented the Alabama from receiving her supplies by the time arranged. On the morning of the 8th, Captain Forsyth, of the *Valorous*, and the Port Captain, by my desire, pressed on Captain Semmes the necessity for his leaving the port without any unnecessary delay; when he pleaded the continued heavy sea and the absence of his cooking apparatus, which had been sent on shore for repairs and had not been returned by the tradesman at the time appointed, and intimated his own anxiety to get away. Between 6 and 7 A.M. on Sunday the 9th he sailed, and on his way round to Simon's Bay captured another vessel, but on finding that she was in neutral waters, immediately released her.

"In the meantime the United States' Consul had, on the 5th August, addressed to me a written statement, that the Federal brig *Sea Bird* had been taken 'about four miles from the nearest land,' and 'already in British waters,' on which I promised immediate inquiry. The next day the Consul repeated his protest, supporting it by an affidavit of the master of the prize, which he held to show that she had been taken about two miles and a-half from the land; and the agent for the United States' underwriters, on the same day, made a similar protest. On the 7th, the Consul represented that the prize had, on the previous day, been brought within one mile and a-half of the light-house, which he considered as much a violation of the neutrality as if she had been there captured, and asked me to have the prize crew taken out, and replaced by one from the *Valorous*, which I declined.

"I had, during this period, been seeking for authentic information as to the real circumstances of the capture, more particularly with reference to the actual distance from the shore, and obtained through the Acting Attorney-General, statements from the keeper of the Green Point Lighthouse (this was supported by the Collector of Customs), from the signalman at the station on the Lion's Head, and from an experienced boatman who was passing between the shore and the vessels at the time. Captain Forsyth, of the *Valorous*, also made inquiries of the Captain of the Alabama, and of the Port Captain, and made known the result to me. And from all these statements, I came to the conclusion that the vessels were not less than four miles distant from land; and on the 8th I communicated to the United States' Consul that the capture could not, in my opinion, be held to be illegal by reason of the place at which it was effected.

"In his reply of the 10th, the Consul endeavoured to show how indefensible my decision must be, if in these days of improved artillery, I rested it on the fact of the vessels having been only three miles from land. This passage is, I think, of considerable importance, as involving an indirect admission that they were not within three miles at the time of capture. And I hope your Grace will concur in my view that it was not my duty to go beyond what I found to be the distance clearly established by past decisions under international law.

"An important question has arisen in connection with the Alabama, on which it is very desirable that I should, as soon as practicable, be made acquainted with the views of Her Majesty's Government. Captain Semmes had mentioned, after his arrival in port, that he had left outside one of his prizes previously taken, the *Tuscaloosa*, which he had equipped and fitted as a tender, and had ordered to meet him in Simon's Bay, as she also stood in need of supplies. When this became known to the Naval Commander-in-chief, he requested me to furnish him with a legal opinion; and whether this vessel could be held to be a ship of war before she had been formally condemned in a Prize Court; or whether she must not be held to be still a prize, and as such prohibited from entering our ports. The Acting Attorney-General, founding his opinion on Earl Russell's despatch to your Grace of the 31st January, 1862, and on Wheaton's "International Law," stated in substance that it was open to Captain Semmes to convert this vessel into a ship of war, and that she ought to be admitted into our ports on that footing.

"On the 8th August the vessel entered Simon's Bay, and the Admiral wrote that she had two small rifled guns with a crew of ten men, and that her cargo of wool was still on board. He was still doubtful of the propriety of admitting her.

"On the 10th August, after further consultation with the Acting Attorney-General, I informed Sir Baldwin Walker that, if the guns had been put on board by the *Alabama*, or if she had a commission of war, or if she were commanded by an officer of the Confederate Navy, there must be held to be a sufficient setting forth as a vessel of war to justify her admission into port in that character.

"The Admiral replied in the affirmative on the first and last points, and she was admitted.

"The *Tuscaloosa* sailed from Simon's Bay on the morning of the 14th instant, but was becalmed in the vicinity until the following day, when she sailed about noon. The *Alabama* left before noon on the 15th instant. Neither of these vessels was allowed to remain in port longer than was really necessary for the completion of their repairs.

"On the 16th, at noon, the *Georgia*, another Confederate war-steamer, arrived at Simon's Bay in need of repairs, and is still there.

"Before closing this despatch I wish particularly to request instructions on a point touched on in the letter from the United States' Consul of the 17th instant, viz., the steps which should be taken here in the event of the cargo of any vessel captured by one of the belligerents being taken out of the prize at sea, and brought into one of our ports in a British or other neutral vessel.

"Both belligerents are strictly interdicted from bringing their prizes into British ports by Earl Russell's letter to the Lords of the Admiralty of the 1st June, 1861, and I conceive that a Colonial Government would be justified in enforcing compliance with that order by any means at its command, and by the exercise of force if it should be required.

"But that letter refers only to "prizes," that is, I conceive, to the ships themselves, and makes no mention of the cargoes they may contain. Practically, the prohibition has been taken to extend to the cargoes; and I gathered, from a conversation with Captain Semmes on the subject of our neutrality regulations, that he considered himself debarred from disposing of them, and was thus driven to the destruction of all that he took. But I confess that I am unable to discover by what legal means I could prevent the introduction into our ports of captured property purchased at sea, and tendered for entry at the Custom-house in the usual form from a neutral ship. I have consulted the Acting Attorney-General on the subject, and he is not prepared to state that the Customs authorities would be justified in making a seizure under such circumstances; and therefore, as there is great probability of clandestine attempts being made to introduce cargoes of this description, I shall be glad to be favoured with the earliest practicable intimation of the views of Her Majesty's Government on the subject.

The allegation that the capture of the *Sea Bride* had taken place within the territorial waters of the Colony was ascertained by clear proof to be erroneous.

The questions stated in the despatch of Sir P. Wodehouse were referred to the Law Officers of the Crown, who reported on them as follows:—*

Opinion.

"My Lord,

"We are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th September ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letters and their inclosures from the Admiralty and Colonial Office, dated respectively the 26th and 29th September ultimo, relative to the proceedings at the Cape of Good Hope of the Confederate vessels of war *Georgia*, *Alabama*, and her reputed tender *Tuscaloosa*; and to request that we would take the various questions raised in these papers, and especially the opinion given by the Acting Attorney-General of that Colony with regard to the latter vessel, into our consideration, and favour your Lordship with such observations as we might have to make thereupon.

"We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd October instant, stating that, with reference to his letter of the 30th ultimo, he was directed by

"Lincoln's Inn, October 19, 1863.

* Appendix, vol. i, p. 322.

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your Lordship to transmit to us the accompanying letter, dated the 29th September ultimo, from Mr. Adams, relative to the proceedings of the Alabama off the Cape of Good Hope, and to request that we would take the same into our consideration, together with papers on this subject then before us, and favour your Lordship with our opinion thereupon.

"In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

"That, so far as relates to the capture of the Sea Bride made by the Alabama, it appears, as we understand the evidence, to have been effected beyond the distance of three miles from the shore; and, as we have already had the honour to report to your Lordship, that distance must be accepted as the limit of territorial jurisdiction, according to the present rule of international law upon that subject. It appears, however, that this prize, very soon after her capture, was brought within the distance of two miles from the shore; and as this was contrary to Her Majesty's orders, it might have afforded just grounds (if the apology of Captain Semmes for this improper act, which he ascribed to inadvertence, had not been accepted by Sir Philip Wodehouse) for the interference of the authorities of the Cape Colony upon the principles which we are about to explain.

"Secondly, with respect to the Alabama herself, we are clearly of opinion that neither the Governor nor any other authority at the Cape could exercise any jurisdiction over her; and that, whatever was her previous history, they were bound to treat her as a ship of war belonging to a belligerent Power.

"Upon the third point raised with regard to the vessel called the Tuscaloosa, we are not able to agree with the opinion expressed by the Attorney-General of the Cape Colony, that she had ceased to have the character of a prize captured by the Alabama merely because she was, at the time of her being brought within British waters, armed with two small guns, in charge of an officer, and manned with a crew of ten men from the Alabama, and used as a tender to that vessel, under the authority of Captain Semmes.

"It would appear that the Tuscaloosa is a barque of 500 tons, captured by the Alabama off the coast of Brazil on the 21st of June last, and brought into Simon's Bay on or before the 7th of August, with her original cargo of wool (itself, as well as the vessel, prize) still on board, and with nothing to give her a warlike character (so far as appears from the papers before us), except the circumstances already noticed.

"We therefore do not feel called upon, in the circumstances of this case, to enter into the question whether, in the case of a vessel duly commissioned as a ship of war, after being made prize by a belligerent Government, without being first brought *infra præsidia* or condemned by a Court of Prize, the character of prize, within the meaning of Her Majesty's orders, would or would not be merged in that of a national ship of war. It is enough to say that the citation from Mr. Wheaton's book by the Colonial Attorney-General does not appear to us to have any direct bearing upon this question.

"Connected with this subject is the question as to the cargoes of captured vessels, which is noticed at the end of Sir Philip Wodehouse's despatch of the 19th August last. We think that, according to the true interpretation of Her Majesty's Orders, they apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters as to the captured vessels themselves. They do not, however, apply to any articles which may have formed part of any such cargoes, if brought within British jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors.

"We think it right to observe that the third reason alleged by the Colonial Attorney-General for his opinion assumes (through the fact had not been made the subject of any inquiry) that 'no means existed for determining whether the ship had or had not been judicially condemned in a Court of competent jurisdiction'; and the proposition that, 'admitting her to have been captured by a ship of war of the Confederate States, she was entitled to refer Her Majesty's Government, in case of dispute, to the Court of her States, in order to satisfy it as to her real character,' appears to us to be at variance with Her Majesty's undoubted right to determine, within her own territory, whether her orders, made in vindication of her own neutrality, have been violated or not.

"The question remains, what course ought to have been taken by the authorities at the Cape, first, in order to ascertain whether this vessel was, as alleged by the United States' Consul, an uncondemned prize, brought within British waters in violation of Her Majesty's neutrality; and secondly, what ought to have been done if such had appeared to be really the fact? We think that the allegations of the United States' Consul ought to have been brought to the knowledge of Captain Semmes, while the Tuscaloosa was still within British waters; and that he should have been requested to state whether he did or did not admit the facts to be as alleged. He should also have been called upon (unless the facts were admitted) to produce the Tuscaloosa's papers. If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters in violation of Her Majesty's Orders, made for the purpose of maintaining her neutrality, it would, we think, deserve very serious consideration whether the mode of proceeding in such circumstances, most consistent with Her Majesty's dignity and most proper for the vindication of her territorial rights, would not have been to prohibit the exercise of any further control over the Tuscaloosa by the captors; and to retain that vessel under Her Majesty's control and jurisdiction until properly reclaimed by her original owners.

(Signed) "ROUNDELL PALMER.
 "R. P. COLLIER
 "ROBERT PHILLIMORE."

Instructions in accordance with this opinion were accordingly sent to Sir P. Wodehouse.*

In connection with the above correspondence it may be convenient to state here the subsequent history of the *Tuscaloosa*.

The question which arose as to this ship was not whether there had been a violation of the law of nations or of Her Majesty's neutrality, but whether the orders issued by Her Majesty's Government, that no prizes should be suffered to be brought into ports within Her Majesty's dominions, had or had not been infringed. This again depended on the question whether the *Tuscaloosa* had or had not been divested of the character of a prize. The Governor of the Cape Colony was advised that she had, and he accordingly permitted her to depart. Her Majesty's Government was advised that she had not. She returned to Simon's Bay on the 26th December, 1863, and was then seized by the Rear-Admiral commanding on the station, with the concurrence of the Governor.* Directions were subsequently sent by Her Majesty's Government that she should be restored to her Commander, Lieutenant Low, on the special ground that, having been once allowed to enter and leave the port, he was fairly entitled to assume that he might do so a second time.† She was not, however, actually given up; Lieutenant Low having left the Cape at the time, and there being no one to receive her. At the conclusion of the war, she was handed over to the Consul of the United States as the representative of her original owners.‡

A further question afterwards arose respecting certain goods which had been imported by a French ship into the Mauritius, and had been claimed by the United States' Consul there, on the ground that they had formed part of the cargo captured by the *Alabama* in the *Sea Bride*. This question having been referred to the Law Officers of the Crown, they reported on it as follows:—§

The Law Officers of the Crown to Earl Russell.

" My Lord,

" Lincoln's Inn, May 11, 1864.

" We are honoured with your Lordship's commands signified in Mr. Murray's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us the papers as marked in the margin, respecting some goods which had been brought to the Mauritius in the French barque *Sirène*, and for the detection of which application was made by the United States' Consul to the Governor of the Colony, on the ground that they had formed part of the cargo of the Confederate prize *Sea Bride*; and Mr. Murray stated that we should observe from the letter from the Colonial Office of the 5th instant, that Mr. Secretary Cardwell is of opinion that, as the question of the general instructions to be issued to the Governors of Her Majesty's Colonies was brought under our consideration in Mr. Layard's letter of the 16th ultimo, it is desirable that we should also have before us the papers now sent to us, relative to the disposal of the cargoes of prize vessels brought into a colonial port in British or other neutral vessels; and Mr. Murray was accordingly to request that we would take these papers into consideration, together with those lately before us, and embody in the proposed instructions to the Colonial Governors such directions as we may consider advisable on this particular head.

" In obedience to your Lordship's commands, we have taken these papers into consideration, and have the honour to report that, after considering these papers, it does not appear to us to be necessary to make any change in, or addition to, the draft instructions prepared by us, pursuant to the request conveyed in Mr. Layard's letter of the 16th ultimo.

" Questions such as that lately raised at the Mauritius by the United States' Consul with respect to the cargo of the *Sea Bride*, must be left, in our opinion, to the civil tribunals. The Executive Government has no authority to disregard or call in question the *prizes* *prize* title, evidenced by possession, of a private non-belligerent person who brings property of this description into a neutral port, whether he be a foreigner or a British subject. And there is no foundation in law for the idea that a valid title cannot be made to property taken in war, by enemy from enemy, without a prior sentence of condemnation.

" The absence of such a sentence may be material when the question is whether captured goods, brought by a belligerent ship of war, exempt from civil jurisdiction, into a neutral port from which prizes are excluded, ought to be regarded by the neutral Government as still having the character of prize; but this is altogether different from a mere question of property in the goods themselves.

" We have, &c.
(Signed) " ROUNDELL PALMER.
" R. P. COLLIER.
" ROBERT PHILLIMORE."

It has been previously stated that the *Alabama* sailed from Simon's Bay on the 15th August. On the 16th September she returned thither,|| and soon afterwards sailed for the Indian seas. The United States war-steamer *Vanderbilt* had in the interval visited both Cape Town and Simon's Bay, coaled, and departed for the Mauritius. She had previously coaled at St. Helena, and at the Mauritius she obtained a renewed supply. The

* Appendix, vol. i, pp. 330-342.

§ Ibid., p. 356.

† Ibid., pp. 342-344.

‡ Ibid., p. 363.

|| Ibid., p. 325.

Part VI.

The Alabama.

Alabama touched and coaled at Singapore on or about the 21st of December, 1863 returned a second time to the Cape of Good Hope on the 20th of March, 1864,* and thence proceeded to Europe, anchoring, on the 11th June, 1864, in the port of Cherbourg. The United States' Minister at Paris, Mr. Dayton, protested in writing against her being received into a French port.† She was, however, admitted, and suffered to coal and to make such repairs as might be necessary, but did not obtain permission to enter the Government docks.

On the 19th June, 1864, she engaged the United States' war-steamer Kearsarge, off the coast of France, and was sunk, after an action lasting about an hour. Some of her officers and crew were picked up and saved by an English yacht, which happened to be near at hand, and some by a French pilot-boat.

With reference to this incident some correspondence passed between Mr. Adams and the Government of Her Britannic Majesty, Mr. Adams erroneously contending that it was the duty of the owner of the yacht to surrender the persons whom he had picked up to the Captain of the Kearsarge. To the representations made on this subject Earl Russell replied:—‡

Earl Russell to Mr. Adams.

* Sir,

Foreign Office, June 27, 1864.

"I have the honour to acknowledge the receipt of your note of the 25th instant, complaining of the interference of a British vessel, the Deerhound, with a view to aid in effecting the escape of a number of persons belonging to the Alabama, who you state had already surrendered themselves prisoners of war, and calling my attention to the remarkable proportion of officers and American insurgents, as compared with the whole number of persons rescued from the waves. You state, further, that you can scarcely entertain a doubt that this selection was made by British subjects with a view to countenance at the escape of these particular individuals from captivity.

"I have the honour to state to you, in reply, that it appears to me that the owner of the Deerhound, of the Royal Yacht Squadron, performed only a common duty of humanity in saving from the waves the Captain and several of the crew of the Alabama. They would otherwise, in all probability, have been drowned, and thus would never have been in the situation of prisoners of war.

"It does not appear to me to be any part of the duty of a neutral to assist in making prisoners of war for one of the belligerents.

"I shall, however, transmit to the owner of the Deerhound a copy of your letter and its inclosures, together with a copy of this letter.

"I am, &c.
(Signed) "RUSSELL."

The following correspondence also passed between the Captain of the Kearsarge and M. Bonfils, who is stated to have been an agent, in France, of the Government of the Confederate States:—§

Captain Winslow, U.S.N., to M. Bonfils.

" Monsieur,

United States steam-ship Kearsarge, le 21 Juin, 1864.

" Certains canots de pilotes, auxquels j'avais permis, par humanité, de sauver plusieurs prisonniers lorsque l'Alabama s'est sombré, les ont amenés à Cherbourg. Ces officiers et hommes d'équipage n'en sont pas moins soumis aux obligations que la loi de la guerre impose; ils sont mes prisonniers, et je demande qu'ils se rendent à bord du Kearsarge pour s'y constituer prisonniers. Dans le cas qu'ils chercheraient à se délier de cette obligation à la faveur des moyens qui ont été employés, dans des cas semblables que pourraient se présenter ils ne doivent plus attendre aucune clémence.

(Signed) "JNO. A. WINSLOW."

M. Bonfils to Captain Winslow, U.S.N.

" Monsieur,

" J'ai reçu votre lettre du 21 Juin. L'objet de votre réclamation est un de ceux sur lesquels je n'exerce aucun contrôle, et je vous ferai remarquer que votre demande aurait du être adressée au Gouvernement Français, chez lequel ces malheureux ont trouvé refuge.

" Je ne connais aucune loi de la guerre qui empêche un soldat de s'échapper d'un champ de bataille après un revers, lors même qu'il aurait été déjà fait prisonnier, et je ne vois pas pourquoi un marin n'en pourrait pas faire autant à la nage. Je dois refuser d'agir comme votre intermédiaire auprès de certaines personnes que vous ne nommez même pas, et que néanmoins vous réclamez comme étant vos prisonniers.

" Je ne puis non plus comprendre comment les autorités des Etats Unis peuvent prétendre retenir des prisonniers dans les limites de l'Empire Français.

" Je suis, &c.
(Signed) "BONFILA."

* Appendix, vol. I, p. 372.

† Ibid., p. 376.

‡ Ibid., p. 380.

§ Ibid., 390.

After the original departure of the Alabama from Liverpool, many communications were from time to time addressed by Mr. Adams to Her Majesty's Government, in which he dwelt on the circumstances that the vessel was built in England, and subsequently received her armament from England; that coal and supplies had also been procured for her from England; that many of her crew were British subjects, and that their wages were paid to their wives and families in England, through merchants resident at Liverpool. These circumstances were repeatedly referred to by Mr. Adams; and, in a letter inclosed by him to Earl Russell, dated the 11th January, 1864,* and written by Mr. Dudley, they were enumerated as proving that the Alabama ought to be deemed a British ship, and her acts piratical. The Law Officers of the Crown were requested to advise the Government whether any proceedings could be taken with reference to the supposed breaches of neutrality alleged by Mr. Adams and Mr. Dudley, and they reported as follows:—†

Opinion of Law Officers.

"We are of opinion that no proceedings can at present be taken with reference to any of the matters alleged as breaches of neutrality in the accompanying printed papers.

"If the persons alleged to be Englishmen or Irishmen who have been serving on board the Alabama are natural-born British subjects, they are undoubtedly offenders against the Foreign Enlistment Act. But, not being (so far as it appears) within British jurisdiction, no proceedings can now be taken against them; and it is, under these circumstances, unnecessary to enter into the question of the sufficiency or insufficiency, in other respects, of the evidence against them contained in John Latham's affidavit of the 8th January last. Whether any acts were done within the United Kingdom, to induce all or any of these persons to enlist in the Confederate Service, or to go abroad for that purpose, which would be punishable under the Foreign Enlistment Act, is a question on which these papers throw little or no light; certainly, they furnish no evidence of any such acts against any persons or person now within British jurisdiction, on which any proceedings could possibly be taken under that Statute.

"So far as relates to the supply of coals or other provisions or stores to the Alabama, and the payments made to relatives of seamen or others serving on board that ship by persons resident in the country, we are not aware of any law by which such acts are prohibited, and therefore no proceedings can be taken against any person on that account.

"So far as relates to Mr. Dudley's argument (not now for the first time advanced) that the Alabama is an English piratical craft, it might have been enough to say that Mr. Dudley, while he enumerates almost everything which is immaterial, omits everything that is material, to constitute that character. The character of an English pirate cannot possibly belong to a vessel armed and commissioned as a public ship of war by the Confederate States, and commanded by an officer belonging to the navy of those States, under their authority. Such the Alabama undoubtedly is, and has been, ever since she first hoisted the Confederate flag, and received her armament at Terceira. Even by the schedule to John Latham's affidavit, in which he describes the greater part of her petty officers and seamen (on what evidence we know not) as Englishmen or Irishmen, it appears that twenty out of the twenty-five superior officers (as well as the Captain) are not so described; and of these twenty officers one is stated to be the brother-in-law of the President of the Confederate States. It is to be regretted that, in any of the discussions on this subject, so manifest an abuse of language as the application of the term 'English piratical craft' to the Alabama should still be permitted to continue.

(Signed) " ROUNDELL PALMER.
 " R. P. COLLIER."

Summary.

The Alabama was built at Birkenhead by a ship-building firm which had for a long time carried on a very extensive business. The building of ships of war required for the use of foreign Governments, and ordered by such Governments directly or through agents, had formed a part of the ordinary business of the firm. It has been alleged that one of the members of the firm was a Member of the House of Commons. This allegation, if it were true, would be immaterial; but Her Majesty's Government has been informed and believes that it was not true, and that Mr. John Laird, who was Member of Parliament for Birkenhead, and had formerly been a partner in the business, had ceased to be so before the building of the Alabama. The vessel appears to have been completed by the builders for delivery in the port of Liverpool, and to have been delivered accordingly; and Her Majesty's Government sees no reason to doubt that the building and delivery of the vessel were, so far as the builders were concerned, transactions in the ordinary course

* Appendix, vol. i, p. 226.

† Ibid., p. 235.

Part VI.

The Alabama.

of their business, though they probably knew, and did not disclose, the employment for which she was intended by the person or persons to whose order she had been built.

The general construction of the vessel was such as to make it apparent that she was intended for war and not for commerce.

The attention of Mr. Dudley had been called to this vessel in November 1861 by his predecessor in office. The attention of Her Britannic Majesty's Government was for the first time directed to her by Mr. Adams, in a Note received on the 24th June, 1862.

Mr. Adams's communication was referred immediately to the Law Officers of the Crown. Inquiries were directed to be forthwith instituted at Liverpool, and such inquiries were instituted and prosecuted accordingly. Mr. Adams was at the same time requested to instruct the United States' Consul at Liverpool to submit such evidence as he might possess, tending to show that his suspicions as to the destination of the vessel were well founded, to the Collector of Customs at that port.

In order to enable Her Majesty's Government to justify and support a seizure of the vessel, it was necessary that the Government should have reasonable evidence, not only that she had been or was being equipped, armed, or fitted out for war, but also that she was so equipped, armed, or fitted out with the intention that she should be used to cruise or commit hostilities against the United States.

Admissible and material evidence, tending to prove the existence of such an unlawful intention, was for the first time obtained by the Customs Officers at Liverpool on the 21st July, 1862, and came into the possession of Her Majesty's Government on the following day. This evidence, however, though admissible and material, was very scanty, consisting in reality of the testimony of one witness, who stated facts within his own knowledge, that of the other deponents being wholly or chiefly hearsay. Further testimony was obtained on the 23rd July, and additional evidence on the 25th July.

It was the right and duty of Her Majesty's Government to inform its judgment as to the credibility and sufficiency of the evidence obtained as aforesaid, by consulting its official Legal Advisers. Nor can any reasonable time taken by the Advisers of the Government for deliberation, especially when additional materials were being daily received and sent to them, be a ground for imputing want of due diligence to Her Majesty's Government. One of Her Majesty's ordinary Legal Advisers, the Queen's Advocate, now deceased, was at that time seriously ill of a malady from which he never recovered, and this was mentioned at the time (on the 31st July, 1862), by Lord Russell to Mr. Adams, as a circumstance which had occasioned some delay.*

All the evidence obtained as aforesaid was in fact referred by the Government as soon as obtained, with the utmost expedition, to its Legal Advisers.

The Advisers of the Government, on the 29th July, reported their opinion that the evidence was sufficient to justify a seizure of the vessel.

On the day on which this opinion was given, and before it could be reported to the Government, the Alabama put to sea. She had not been registered, and the application for a clearance, which is usual in the case of ships leaving port, had not been made, and the intention to carry her to sea was concealed by means of an artifice.

The destination of the vessel, and the course which she would take after putting to sea, were entirely unknown, except to the persons immediately concerned in despatching her. Orders for arresting her were, however, sent by the Government to various places at which she might probably touch after leaving Liverpool, and to Nassau.

The Alabama sailed from England wholly unarmed, and with a crew hired to work the ship and not enlisted for the Confederate service. She received her armament at a distance of more than a thousand miles from England, and was armed for war, not within the dominions of Her Majesty, but either in Portuguese waters or on the high seas.

The guns and ammunition which were put on board of the Alabama off Terceira had been procured and exported from England in an ordinary merchant-steamer, which loaded them as cargo and sailed with a regular clearance for Nassau.

The Alabama was commissioned by the Government of the Confederate States, and commanded and officered by American citizens. Of the crew a considerable number were British subjects, who were induced by persuasion and promises of reward to take service in her whilst she was off Terceira. Others were American citizens, and the proportion which these bore to the rest increased during her cruise.

After having been armed and commissioned as a ship-of-war of the Confederate States, the Alabama was admitted in that character into ports of all the countries visited by her, amongst which were several of the Colonies of Great Britain. In these she was received on the same footing as elsewhere, without favour or partiality.

No serious endeavour to capture the Alabama appears to have been made on the part

* Appendix, vol. i, p. 249.

of the Government of the United States. The *Tuscarora*, which had been summoned by Mr. Adams to an English port in order to intercept her on her departure, failed to do so, apparently through the remissness of the *Tuscarora*'s Commander. During the whole cruize, which lasted nearly two years, and until she sailed from the port of Cherbourg to engage the *Kearsarge*, she was only encountered twice by United States' ships; once in the Gulf of Mexico, when she voluntarily provoked an action and sunk her opponent, and a second time when she eluded the pursuit of the *San Jacinto*, at Martinique.

Her Britannic Majesty's Government cannot admit that, in respect of the *Alabama*, is justly chargeable with any failure of international duty, for which reparation is due from Great Britain to the United States.

Part VII.

The Georgia.

PART VII.

Statement of Facts relative to the Georgia.

On the 8th April, 1863, Mr. Adams addressed to Earl Russell a Note respecting a steam-vessel, built at Dumbarton, in Scotland, and at first known as the "Japan," but subsequently as the "Georgia."

This vessel had put to sea six days before the date of Mr. Adams' Note, and was at that date out of the Queen's dominions. No information whatever relating to her had previously reached Her Majesty's Government. Mr. Adams' Note was as follows:—*

Mr. Adams to Earl Russell.

"My Lord,

"Legation of the United States, London, April 8, 1863.

"From information received at this Legation, which appears entitled to credit, I am compelled to the painful conclusion that a steam-vessel has just departed from the Clyde with the intent to depredate on the commerce of the people of the United States. She passed there under the name of the Japan, but is since believed to have assumed the name of the Virginia. Her immediate destination is the Island of Alderney, where it is supposed she may yet be at this moment. A small steamer called the Alar, belonging to Newhaven, and commanded by Henry P. Maple, has been loaded with a large supply of guns, shells, shot, powder, &c., intended for the equipment of the Virginia, and is either on the way or has arrived there. It is further alleged that a considerable number of British subjects have been enlisted at Liverpool, and sent to serve on board this cruiser.

"Should it be yet in the power of Her Majesty's Government to institute some inquiry into the nature of these proceedings, in season to establish their character, if innocent, or to put a stop to them, if criminal, I feel sure that it would be removing a heavy burden of anxiety from the minds of my countrymen in the United States.

"I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

From despatches addressed by Mr. Adams and Mr. Dudley to their own Government, it appears that the Consuls of the United States at Glasgow and Liverpool, and Mr. Adams himself, had for a long time been in possession of information respecting this vessel, and that she had long been an object of suspicion to them. Mr. Adams, on the 9th April, 1863, wrote as follows to Mr. Seward:—

"Lastly, comes the case of the Japan, *alias* the Virginia. I have been long in the possession of information about the construction and outfit of that vessel on the Clyde, but nothing has ever been furnished to me of a nature to base proceedings upon. Learning, however, that she had gone to the Island of Alderney to take her armament there, I made up my mind to send notice of it to the British Government, and leave it to them to act in the case as they might think fit."

Mr. Dudley, on the 3rd April, had written as follows to Mr. Seward:—

"Mr. Underwood, our Consul at Glasgow, has no doubt informed you about the steamer now called the Japan, formerly the Virginian, which is about to clear from this port for the East Indies. Some seventy or eighty men, twice the number that would be required for any legitimate voyage, were shipped at Liverpool for this vessel, and sent to Greenock on Monday evening last. They are shipped for a voyage of three years. My belief is, that she belongs to the Confederates, and is to be converted into a privateer; quite likely to cruise in the East Indies, as Mr. Young, the Paymaster from the Alabama, tells me it has always been a favourite idea of Mr. Mallory, the Secretary of the Confederate Navy, to send a privateer in these waters. I sent a man from here to Glasgow to accompany these men, to endeavour to find out the destination of the vessel, &c. He has not been successful yet in his efforts. He has been on board, and writes that she has no armament, and he is still there watching her."

No communication respecting this vessel was made to Her Majesty's Government until the 8th April, six days after her departure from British waters.

The receipt of Mr. Adams' Note of the 8th April was unofficially acknowledged by Mr. Hammond, one of the Under-Secretaries of State for Foreign Affairs, as follows:—*

Mr. Hammond to Mr. Adams.

"(Private.)

"My dear Sir,

"Foreign Office, April 8, 1863.

"I found your immediate letter on my arrival at the office at 12:45, and as your mail goes, I believe, to-day, you may like to know at once that within half an hour of that time it was sent to the

* Appendix, vol. i, p. 399.

Home Office, within whose particular jurisdiction are the Channel Islands. A copy will also be sent to the Treasury, as soon as it can be made.

" You shall have an official acknowledgment of your letter as soon as I can get Lord Russell's signature; but he is out of town.

" Very faithfully, &c.
(Signed) " E. HAMMOND."

Copies of Mr. Adams' Note were, on the same day, sent to the Home Office and the Treasury, and those Departments were requested to adopt, without delay, the measures most suitable for ascertaining the correctness of the report, and, if it should prove to be well founded, then to take the most effectual measures allowed by law for defeating the alleged attempt to fit out a belligerent vessel from a British port, and for bringing to justice all persons connected with the vessel who might have rendered themselves amenable to the law.

In pursuance of this request, the following letter was addressed by the Under-Secretary of State for the Home Department to the Lieutenant-Governor of Guernsey:—*

Mr. Waddington to Major-General Slade.

" Sir, " I am directed by Sir George Grey to transmit to you herewith, as received through the Foreign Office, a copy of a letter from the United States' Minister at this Court, respecting a steam-vessel named either the Japan or the Virginia, reported to have left the Clyde for Alderney, where she is to receive on board an armament conveyed to that island by a small steamer, the Alar, belonging to Newhaven, and is to be eventually employed in hostilities against the United States; and I am to request that you will make immediate inquiry into the truth of the allegations contained in that communication.

" I have to call your attention to the Statute 39 Geo. III, cap. 69. Section 7, appears to be applicable to this case, if the information which has been given to the Minister of the United States of America should turn out to be correct. In that case the Law Officers of the Crown should be instructed to take, without delay, the proper proceedings authorized by the law of Alderney, to enforce the provisions of the Act in question, and the Officers of Customs may be called upon to assist, if necessary.

" Sir George Grey will be glad to be informed of the result of the inquiry, and of any steps that may be taken in consequence.

" I have, &c.
(Signed) " H. WADDINGTON."

The Lieutenant-Governor, on receiving these instructions, desired Captain de Saumarez, commanding Her Majesty's ship Dasher, to proceed at once to Alderney. It was found, however, that Mr. Adams' information as to the immediate destination of the two vessels mentioned in his Note was erroneous.

The Commissioners of Customs were, on the same day (8th April) directed by the Lords Commissioners of the Treasury to instruct their officers at Alderney to co-operate with the Lieutenant-Governor of Guernsey. This order was forthwith executed, and the Commissioners wrote to the same effect to their officers at Guernsey. They likewise instructed the Collectors of Customs at Greenock and Glasgow to report all the information which they might be able to obtain respecting the Japan.

The Collector at Greenock reported as follows:—†

Mr. Hodder to Commissioner of Customs.

" Honourable Sir,

" With reference to the Board's commands signified by Mr. Gardner's letter of yesterday's date, directing me to report to the Board all the particulars I may be enabled to ascertain respecting a vessel called the Japan or Virginia, which it is alleged has recently sailed from the Clyde, to be employed against ships of the United States, I beg to report an iron vessel named the Japan, Thomas Hitchcock, master, registered at Liverpool as 427 tons, official No. 45868, was built at Dumbarton, and measured by the measuring officer at Glasgow, came down the river and proceeded to Gareloch Head, to adjust her compasses, and afterwards brought up at the Tail of the Bank, where she remained three or four days. This vessel was, on the 31st ultimo, entered outwards by Colin S. Caird, for Point de Galle and Hong Kong, with a crew of forty-eight men. On the 1st instant she shipped the under-mentioned bonded stores, which were sent from Liverpool, viz.: 115 gallons of spirits, 32 gallons of wine, 244 lbs. of tea, 590 lbs. of coffee, 212 lbs. of tobacco, 10 lbs. cigars, 18 cwt. 3 qrs. 2 lbs. of sugar, 2 cwt. 2 qrs. 8 lbs. of molasses, 2 cwt. 1 qr. 5 lbs. of raisins, and 1 cwt. 1 qr. 8 lbs. of currants; and cleared the same day in ballast for Point de Galle and Hong Kong.

" It appears she left the anchorage at the Tail of the Bank early on the morning of the 2nd instant, with the ostensible purpose of trying her engines, intending to return, having on board several joiners who were fitting up her cabin; and I am informed that after she left this the joiners were employed in

* Appendix, vol. i, p. 401.

† Ibid., p. 403.

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The Georgia.

fitting up a magazine on board, and were subsequently landed on some part of the coast lower down the Clyde.

" It is reported that she did not take her final departure until the 6th or 7th instant; but I cannot ascertain where she went after leaving this anchorage.

" I have questioned the officer who performs Tide Surveyor's duty afloat, and who visited her on the evening of the 1st instant, to see that the stores were correct. He informs me he saw nothing on board which could lead him to suspect that she was intended for war purposes. I can testify that she was not heavily sparred; indeed she could not spread more canvas than an ordinary merchant-steamer. I beg to add, when the Tide Surveyor was on board, the joiners were fitting doors to the cabins.

" I am, &c.

(Signed) " J. F. MOORE HODDER, Collector."

The officer acting for the Collector at Glasgow transmitted the subjoined Report made by the Measuring Surveyor at that port.* He added that the Japan had not cleared from Glasgow:—

" Sir,

" In compliance with your reference, I beg to report that an iron screw-steamer, called the Japan, was recently built by Messrs. W. Denny, Brothers, at Dumbarton.

" I surveyed her on the 17th January last, and visited on two subsequent occasions for the purpose of completing my survey. She appeared to me to be intended for commercial purposes, her framework and plating being of the ordinary sizes for vessels of her class.

" I annex a copy of my certificate of survey, which shows the vessel's tonnage and description, and beg to add that the formalities and certificate of survey for the Japan were forwarded to Liverpool on the 2nd ultimo, with a view to her being registered as a British ship.

" Respectfully submitted,

(Signed) " M. COSTELLO, Measuring Surveyor."

* FORM NO. I A.
Steamer.

" CERTIFICATE OF SURVEY.†

Name of Ship.	British or Foreign Built.	Port of intended Registry.	How Propelled.
"Japan"	British	Liverpool	By a screw propeller.
Number of Decks	One and a Pomp.	Build	Clincher.
Number of Masts	Two.	Galleries	Nose.
Rigged	Brig.	Head	Dead, Women.
Stern	Round.	Framework	Iron.
MEASUREMENTS.			
Length from the fore part of Stern under the Bowspit to the aft side of the head of the stern post	..	219	..
Mass breadth to outside plank	..	27	25
Depth in hold from Tonnage Deck to Ceiling at Midships	..	14	13
Names and Address of Builder—W. Denny, Brothers, Dumbarton,			
TONNAGE.			
Tonnage under Tonnage Deck .. ..	..	554-54	No. of Tons.
Closed-in Spaces above the Tonnage Deck, if any; viz.:—	..	..
Space or Spaces between Decks .. ..	..	..	..
Pomp .. ..	..	..	85-67
Round-house .. ..	..	..	..
Other enclosed Spaces, if any, naming them—Store-rooms on Deck .. ..	..	..	1-39
Excess of Space, appropriated to the Crew above $\frac{1}{10}$ th of the remaining Tonnage .. ..	..	..	6-68
Total .. ..	..	668-28	
Deduction for Space required for Propelling Power as measured .. ..	..	221-93	
Length of Engine Room	54 feet 3 tenths.	Register Tonnage (after making Deduction for Space for Propelling Power in Steamers)	
Number of Engines	2	..	427-25
Combined Power (estimated Horse-power) Number of Horse-power	200 Horses.		
Name and Address of Engine Makers—			
Denny and Co., Dumbarton.			

" I, the undersigned Martin Costello, Measuring Surveyor for this port, having surveyed the above-named ship, hereby certify that the above particulars are true, and that the name and the Port of Registry are properly painted on a conspicuous part of her stern in manner directed by the Merchant Shipping Act, 1854.

" Dated at Glasgow, the 4th day of February, 1863.

(Signed) " M. COSTELLO, Surveyor."

It appears from these Reports that the vessel, when surveyed by the Measuring Surveyor, presented nothing calculated to excite suspicion; that she had the appearance of being intended for commercial purposes, her framework and plating being such as are

* Appendix, vol. i, p. 404.

† Ibid., p. 423.

ordinary in trading-vessels of her class; that she had been regularly entered outwards for Point de Galle and Hong Kong, with a crew of forty-eight men, and that, on the 1st April, 1863, she had cleared for that destination in ballast.

It subsequently appeared further that she had, on the 20th of March, 1863, been registered as the property of a Mr. Thomas Bold, a merchant residing at Liverpool, on the declaration of Bold that he was the sole owner of her. It also appeared that she had been advertised at the Sailors' Home in Liverpool as about to sail for Singapore; that seamen were hired for her at Liverpool as for a ship bound to that port; and that all her crew so hired signed articles for a voyage to Singapore, or any intermediate port for a period of two years, and that the men believed that this was the real destination of the ship. She took her crew on board whilst lying in the Clyde, off the port of Greenock, and on the 2nd of April she sailed.

With respect to the Alar, the small steamer stated by Mr. Adams in his Note of the 8th to have conveyed men and munitions of war to the Japan, the Commissioners of Customs had, before the date of that note, received from their Collector at Newhaven the following Report, which they had forwarded to the Treasury:—*

Mr. Dolan to the Commissioners of Customs.

"Honourable Sirs,

"The steam-ship Alar, of London, 85 tons, owned by H. P. Maples, sailed on Sunday morning, 5th instant, at 2 A.M., bound according to the ship's papers, viz., the accompanying content, for Alderney and St. Malo. On Saturday, at midnight, thirty men, twenty of whom appeared to be British sailors, ten mechanics, arrived by train. Three gentlemen accompanied them, Mr. Lewis, of Alderney; Mr. Ward, and Mr. Jones. The men appeared to be ignorant of their precise destination; some said they were to get 20*l.* each for the trip. A man, rather lame, superintended them. Shortly after midnight, a man arrived from Brighton on horseback, with a telegram, which, for purposes of secrecy, had been sent there and not to Newhaven, it is suspected. Mr. Staniforth, the agent, replied to my inquiries this morning that the Alar had munitions of war on board, and that they were consigned by

† to a Mr. Lewis, of Alderney. His answers were brief, and with reserve, leaving no doubt on my mind nor on the minds of any here that the thirty men and munitions of war are destined for transfer at sea to some second Alabama. The private telegram to Brighton intimated, very probably, having been reserved for the last hour, where that vessel would be found. Whether the shipment of the men, who all appeared to be British subjects, can, if it should be hereafter proved that they have been transferred to a Federal or Confederate vessel, be held as an infringement of the Foreign Enlistment Act, and whether the clearance of the Alar, if hereafter proved to be untrue, can render the master amenable under the Customs Consolidation Act, is for your consideration respectfully submitted.

(Signed) "R. J. DOLAN, Collector."

"No. 7.

"Content.

"Port of Newhaven.

Pilot

Ship's Name and Destination.	Tonnage and Number of Guns.		If British, Port of Registry; if Foreign, the Country.	Number of Crew.	Name of Master.	Number of Passengers or Troops.
	Tons.	Guns.				
"Alar," Alderney and St. Malo.	85	..	British ship, London	16	Joe. Back.	..

Warehoused and Transhipment Goods.				Drawback and Restricted Goods.			
Marks.	Numbers.	Number and Description of Packages.	Remarks.	Marks.	Numbers.	Number and Description of Packages.	Remarks.

British Goods and Foreign Goods free of Duty, and Foreign Goods not for Drawback:—
Sundry Free Goods.

"G. W. STANIFORTH, Broker.

"Examined

"Cleared } April 4th.

(Signed) "W. S. FLIST, Examining Officer.

"I do declare, That the above Content is a true account of all goods shipped or intended to be shipped on board the above-named ship, and correct in all other particulars, and that all the requirements of the Act 17 & 18 Vict., cap. 104, have been duly complied with.

(Signed) "JOE. BACK, Master.

"Signed and declared, this 4th day of April,

"before me, (Signed) "W. K. STAVELEY, Collector."

* Appendix, vol. i, p. 405.

† Blank in the original.

Part VII.

The Georgia.

When this Report was received no information respecting the vessel then known as the Japan had reached the Commissioners of Customs or the Government, and on this point no information was or could be conveyed in the Report, since none was possessed by the Collector at Newhaven.

On the 11th April, 1863, the following statement appeared in the second edition of the "Times" newspaper:—*

"*Plymouth, Saturday Morning.*

"The steam-ship Alar, Captain Back, of and from Newhaven, for St. Malo, put in here this morning and landed seventeen men belonging to the steam-ship Japan, Captain Jones, 600 tons, which left Greenock on the 28th March for a trading voyage in the Chinese seas. On arrival off the coast of France she lay-to for three days, it is supposed to take in more cargo. On the 4th April, at 11 A.M., one of the condensers of the steam-engines, which are about 200 horse-power, exploded, and two firemen in the stokehole were scalded, viz., Alexander McDuff, of Edinburgh, and William Hamilton, of Downpatrick, seriously; they were taken immediately into the Captain's cabin, transferred to the Alar on the 9th, and are now in the Devon and Cornwall Hospital here. The other fifteen are seamen and firemen, who took advantage of the proximity of the Alar, and are said to have 'locked out of the voyage to China.' They left by train this morning for Liverpool, Portsmouth, &c. The Japan, which had a complement of eighty men, has proceeded. The Alar had to lay-to in the Channel on Thursday and Friday, in consequence of some trifling damages."

Earl Russell, on observing this statement, gave orders that it should be immediately brought to the notice of the Secretary of State for the Home Department and the Lords Commissioners of the Treasury. Afterwards, and on the same day, at 5 P.M., he received from Mr. Adams the following Note referring to it:—†

Mr. Adams to Earl Russell.

"My Lord,

"*Legation of the United States, London, April 11, 1863.*

"I have the honour to inclose to your Lordship a slip extracted from the London 'Times' of this day touching the case of the vessel now called the Japan, but named at Greenock lately the Virginia. It is needless to add that the statement therein made of the destination of the vessel is known to me to be false. I have reason to believe that she has not gone. The steamer Alar has already transferred to her one 56-pounder gun and four smaller ones, and is expected to return to her.

"I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

Copies of this Note were immediately sent to the Home Department and the Treasury, with a request that it should receive immediate attention, and that those Departments would take such steps as might be legally in their power to prevent a violation of the law.

On the same evening, at 7.40 P.M., orders were sent by telegraph to the Collector of Customs at Plymouth to make inquiry about the Alar; and, at 11.40 P.M., an answer was received from him to the effect that she had arrived that morning, and that the Collector had taken the master's statement, and had forwarded it to the Board of Customs.

The statement so forwarded, and the Collector's letter inclosing it, were as follows:—‡

Mr. Browne to the Commissioners of Customs.

"Honourable Sirs,

"*Custom-House, Plymouth, April 11, 1863.*

"I beg to submit, for your Honour's information, the inclosed statement of the master of the steamer Alar, of London, to which he has affixed his signature. He states that his vessel is a regular trader between Newhaven and the Channel Islands.

"Respectfully, &c.

(Signed) "N. E. BROWNE."

Statement of Mr. Back, Master of the screw-steamer Alar.

"I cleared from Newhaven on the 4th April for Alderney and St. Malo, in ballast, and sailed from thence on Sunday the 5th, having on board about thirty passengers of whom about six were in the cabin, and a quantity of packages, which I supposed contained provisions and passengers' baggage. Before leaving, a principal party was pointed out to me by the owner of my ship, and I was informed by him that the provisions belonged to this party, and that I was to obey his instructions.

"On Sunday, about 3 P.M., my engine broke down, owing to the bursting of the feed-pipe, and I was compelled to make out fires, and blow off steam; the engineer repaired damage, and after about seven or eight hours' delay, I proceeded on my voyage. Broke down again on Monday morning, from

* Appendix, vol. i, p. 402.

† Ibid., p. 401.

‡ Ibid., p. 406.

some cause, and proceeded, after repairs and similar delay. Laying to on Tuesday afternoon and night, weather very thick, and blowing from westward.

"On Wednesday, about 11 A.M., saw a steamer-ship a long way off to the westward, with signal flying, but I know not what colours. The passenger before-mentioned asked me to bear down to the ship, which I did; but before reaching her, my engine broke down again, when the steamer came up to me, and took my vessel in tow. The steamer towed me towards the coast of France, in order that I might get shelter to effect repairs. She towed me for about an hour, then the rope parted; and in coming back to fetch me again, the tow-rope got foul of the large steamer's propeller, and caused her to fall down upon us, damaging our stanchions, and carrying away our bowsprit.

"The passenger before-mentioned then asked me to transfer the provisions and luggage to the large steamer, which was done, by about twenty of the passengers, who also went on board the steamer, where they remained. I was then asked by a person in authority on board the large steamer, if I would take two men who had been badly scalded to any port where there was an hospital, which I consented to do, and they, with about nine or ten others, and the person who had spoken to me about the sick men, came on board my vessel; and I at once proceeded for the first English port I could make that had an hospital.

"I parted with the large steamer on Thursday afternoon. On the afternoon of Friday we again broke down, and were delayed about the same time as before. About 2 A.M., on Saturday the 11th, we sighted the Eddystone, and bore up for Plymouth, which we reached about 4:30 A.M., when we landed the person we had taken with us from Newhaven—the person who spoke to us on board the steamer—about one dozen men, including the men from the steamer, and the two sick men for the hospital. I heard the large steamer was called the *Japan*, but I did not see her name on her stern, as I had enough to do to attend to my own ship.

(Signed) "J. F. BACK, *Master of the Alar.*

"Custom-House, Plymouth, April 11, 1863.

(Signed) "N. E. BROWSE, *Collector.*"

On the 16th April, Earl Russell received from Mr. Adams a Note inclosing two depositions purporting to be made by seamen who had shipped in the *Japan* at Greenock, as part of her crew, and had since returned to Liverpool. The Note and copies of depositions were as follows:—*

Mr. Adams to Earl Russell.

"My Lord,

"I have the honour to transmit copies of two depositions of British subjects, who appear to have been solicited to engage in the unlawful expedition of the *Japan*, *alias* the *Virginia*, against the commerce of the United States. I append a list of the officers and men, subjects of Great Britain, shipped at the Sailors' Home in Liverpool, a large part of whom have been induced to join the piratical expedition. Likewise a list of the men who refused to enlist, left the *Virginia*, and returned to Liverpool.

"It is not without great pain that I feel it my duty to point out to your Lordship these transactions at Liverpool, and the extent to which, if not in some way prevented, they are calculated to give rise to complaints in the United States of the violations of neutrality deliberately committed by Her Majesty's subjects in the port of Liverpool.

"I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

Deposition of Edward Thompson.

"Edward Thompson, of No. 18, Denison Street, in Liverpool, makes oath and says:—I am an able seaman, and served for five years in a man-of-war, on Her Majesty's ship *Neptune* and others. I was shipped from Liverpool to Greenock to join the steamer *Japan*, as I was told, bound on a voyage to Singapore. She was advertised in Sailors' Home as bound for this port. I belong to the Royal Naval Reserve. We sailed from Greenock on the 2nd day of April instant. Captain Hitchcock was in command. We sailed first down towards the Isle of Man. We then tacked and went north through the North Channel and down the west coast of Ireland, passed Cape Clear, and steered east up the Channel. Ushant Light was the first light we sighted; went towards St. Malo. We then put her to the westward, and dodged at slow steam all night. We fell in with the *Alar* steamer just off Morleux; we were not more than three or four miles from land at the time. When the *Alar* saw us she hoisted a flag for a pilot; after she got her pilot on she hoisted a flag of distress. We had taken her in tow before the pilot reached us. We floated about until night, then got the *Alar* alongside, and commenced to discharge the cargo into the *Japan*. We were three nights engaged in discharging the cargo; we did nothing in the daytime. She brought to us guns, shot, shell, rockets, ammunition, rifles, cutlasses, and all sorts of implements of war. I counted nine Whitworth guns to be mounted on the decks. I may be mistaken about the maker's name. I only know they were breech-loading guns. I understood there was one large pivot gun on board when we left Greenock. I left the vessel on Friday last in the steamer *Alar*. After we got all the cargo discharged from the *Alar* into the *Japan*, at 4 o'clock on Friday afternoon, while we were off Brest, about two miles from land, the new captain who came to us in the *Alar*, having dressed himself in regimentals, in a blue uniform with a star in the epaulette, had all hands piped aft by the boatswain. He then directed the lieutenant to read the articles, and then said, 'We are not bound for Singapore, we are going to sail under the Confederate flag, the same as the

* Appendix, vol. i, p. 412.

Part VII.

The Georgia.

Alabama, to sink, burn, and destroy vessels belonging to the United States. All of you who wish to join, I will give 10*l.* in cash as soon as you sign the articles, and you who do not wish to join can go back in the *Alar*. Those who join shall also have 1*l.* per month extra.' The captain told us her name was to be the *Virginia*, and this was the name mentioned in the articles which we were required to sign. They had the Confederate flag on board at the time laid down on the floor of the cabin, but it was not hoisted. The articles were for three years, or during the war with the United States. During the night, while we were discharging the cargo from one vessel to the other, we were at anchor very close into the land; not more than half a mile from the land, opposite a magazine which lies a quarter of a mile from Ushant Light. We went to this place, or very near there, every night. After reading the articles, the men who refused to sign asked about their wages. They were told that Captain Hitchcock would settle this after we arrived at Liverpool. I saw Mr. Hitchcock yesterday at Jones and Co.'s office, No. 28, Chapel Street, Liverpool. This house of Jones and Co. acted as agents for shipping the men. One of their clerks was at the steamer which took us around from Liverpool to Greenock. They signed all the shipping notes; at least, they were all made payable there at Jones and Co.'s offices, and they have paid them since. They paid me my shipping note yesterday at their office in Liverpool. There were ten sailors lately belonging to the British Navy from Portsmouth, who came out in the *Alar*, but refused to join the vessel. They received 2*l.* a-piece from Captain Hitchcock not to say anything about the matter. This was paid them while we were returning to Plymouth. Mr. Jones, one of the firm in Chapel Street, Liverpool, who came out to us in the *Alar*, was present at the time when the money was paid, and ordered Captain Hitchcock to pay it to the men. Mr. Jones seemed to [take] charge of everything. The report was that she, the *Virginia*, was to go to Madeira. She had not more than five days' coal when we left her. She is an iron vessel, very slightly built, with a full poop as far as the after scuttle hole to fire-room and top-gallant forecastle. Three masts, square rigged forward; fore and aft, main and mizen. She has one funnel between the fore and main mast; a house over engine-room, with a donkey engine in it. The *Alar* is a British steamer hailing from London. When she came out to meet the *Japan* or *Virginia*, as she is called, she sailed from Newhaven.

(Signed) EDWARD THOMPSON.

"Sworn before me, at Liverpool, this 14th day of April, 1863.

(Signed) "J. PEARSON, a Commissioner to Administer Oaths in Chancery in England."

Deposition of Thomas Mahon.

"Thomas Mahon, residing at No. 8 Court, Gore Street, Toxteth Park, Liverpool, being sworn, says:—

"I am a native of Liverpool, and am a labourer. On or about the 27th day of March last past hearing that a steamer was wanting men for Singapore, I went to the Sailors' Home in Liverpool, and was introduced to a man as the captain. I don't remember his name at present; I believe it is Hitchcock. He is in Liverpool now. He told me he was Captain of the *Japan*. He said he wanted firemen and trimmers, and the next day, the 27th, I went with him to the shipping-office, and there signed articles for steamer *Japan* for Singapore, or any intermediate port, for two years. Captain Hitchcock engaged me, and witnessed my signing. I was to have 3*l.* 10*s.* per month. About fifty men in all signed in the same way. When we had signed, we were told to take our clothes to 'Jones and Co.'s' No. 28, Chapel Street, and would then receive an advance note for a month's pay. I took my clothes there, and received a note for 3*l.* 10*s.* payable ten days after the ship sailed from Greenock. At Jones and Co.'s we were told by the Captain Hitchcock to meet at the Glasgow boat at 5 o'clock on Monday afternoon at the dock. We went as ordered, and our clothes were brought down, and our fares were paid by a clerk from Jones and Co. We sailed the same evening in the *Heron*, about fifty in all. We arrived at Greenock about 3 or 4 the next afternoon, and a tug came alongside and took us off the *Heron* and put us on board the screw-steamer *Japan* lying in the river opposite Greenock. Captain Hitchcock came off in the tug and took us on board. He went on board with us; he gave us our orders. I had shipped as coal trimmer, and believed she was an English steamer, and going to Singapore. She had then the English ensign flying. Captain Hitchcock remained on board and exercised command. We remained at Greenock till Wednesday. On Thursday, about 6 in the morning, when we got under weigh, the pilot and we were going on a trial trip. On the Wednesday night the revenue officers came on board, after the stores came on board, and put seals on the stores. The stores came off in a steamer and a lighter. They consisted of large quantities of spirits, clothing, blankets, beds, knives and forks, tins, and the like. I did not see any other Government officers visit the ship. We sailed out, I believe, on the Thursday morning, as we supposed on the trial trip, and steered towards sea. In the afternoon we returned to the lighthouse down the Clyde and stopped, but did not anchor. A tug came to us there with some more men and provisions from Greenock, and as soon as we had taken them on board we started down again and steered right to sea. The pilot left us next morning off Castletown, Isle of Man. Captain Hitchcock had command of the vessel. About two days after we made land, as I was told, on the coast of France, and we kept beating about there for several days. We wondered why, but did not ascertain the reason.

"On Monday, the 6th, an English screw-steamer, the *Alar* of London, came to us and spoke us. We were so near the coast of France that a shot could be fired ashore. Captain Hitchcock told the *Alar* to go under the island. The *Alar* soon after made a signal as if she was broke down, and the *Japan* took her in tow. We towed her awhile and the hawser broke. She then steamed away herself, and we soon after spoke a French pilot-boat and we took a pilot on board, as did also the *Alar*. The *Alar* sailed away into a small bay and we followed, and came to an anchor near the shore, no further off than I could have thrown a stone. The *Alar* then made fast alongside, and that night a very large case of guns and a quantity of ammunition in small cases were taken on board the *Japan* from the *Alar*. The next morning both vessels sailed out and we went out to sea, and the *Alar* into another bay. In

the afternoon we joined the Alar in the other bay, and took on board the rest of her cargo, consisting of guns and ammunition. Men in the meantime were engaged making the fittings for the guns. The same afternoon a tall man they called Lamont or Dupont came on board from the Alar and took charge of the Japan. He came on deck in uniform and called all the men aft. He told us she was no more to be called the Japan but the Virginia, Confederate war-steamer. He produced articles; and reading them to the effect that there would be discipline same as the Alabama or any other under the Confederate flag, he said he was going to burn and destroy all North American vessels, and told us we should have 10*l.* bounty to sign for three years under the Confederate flag. One of the men asked about prize money, and he said we should have the same as the Alabama. That any man who had a family could have half-pay. Eight of us went into the cabin to see what he would do with us if we would not ship. He said Mr. Jones would pay our fare through to Liverpool and anything else that we required when we came ashore. Mr. Jones was sitting at the table where they were paying the bounty and signing the articles, and said it would be all right. We and a number of others, in all about twenty-four, refused to join, and the same night we were taken to the Alar and both vessels left the bay. The next morning the Alar took the pilot from the Japan and landed him and her own about where we had picked them up. I was below when she took the pilot off, and did not see the Japan after leaving her in the bay. I heard the order given to hoist the Confederate flag. Captain Hitchcock, Mr. Jones, and the chief and second mates came from her with us. We were landed at Plymouth on Saturday morning, and received from Captain Hitchcock a sovereign each to pay our way to Liverpool, and the same day came in to Liverpool in the steamer.

(Signed) "THOMAS MABON.

"Signed the 14th day of April, 1863.

"Before me,

(Signed) "WM. RATHBONE, a Magistrate for the County of Lancaster."

Mr. Adams also inclosed the two lists mentioned in his Note. In the "list of officers and men," the only officers mentioned were the master, first mate, second mate, store-keeper, and boatswain. All of these, except the boatswain, were stated to have returned in the Alar, together with many others of the original crew of the Japan.

On the same 16th April, 1863, Earl Russell received from Her Britannic Majesty's Consul at Brest a Report, dated the 13th April, which was as follows:—*

Consul Sir A. Perrier to Earl Russell.

"My Lord,

"I have the honour to report to your Lordship that I have received the following letter from Conquet:—

"Sir, "Conquet, April 10, 1863.
 "I have the honour to inform you that on the 7th of this month two English vessels, a brig and a steam-schooner, were seen in the Fromveur (a passage between Ushant and the mainland), with a signal for a pilot. Pitou and Marec, pilots of Molene, went on board. The names given to them were, Japan, of Liverpool, for the brig, and Alar, of London, for the schooner, which was bound from Euzie to Liverpool with a general cargo. This vessel having sprung a leak, had requested the brig to stay by until all danger was over. After beating about all day they anchored in Bertheaume Bay, about 6 in the evening, where they tried to tranship part of the cargo from the schooner to the brig, but heavy surf prevented their doing so. The pilots offered to bring the vessels into Brest, which was refused. Next morning, the 8th, they got under weigh at about 6 in the morning, went through Conquet Channel, and anchored in Stiff Bay, under Ushant, where the transhipment was effected that evening. They then sailed for Liverpool."

"I called upon the Vice-Admiral, Commander-in-chief, to know if he had received any account of this affair from Conquet. He replied that he had not yet received the official Report, but that he had been informed of all that I had stated, and also that the schooner had struck on a rock in Stiff Bay, and that the cries of her crew had been heard at the lighthouse on Ushant. Suspecting that this transhipment might be of war contraband goods for America, he has demanded a full Report from the Commissary of Marine at Conquet, and will communicate it to me.

"I have, &c.
 (Signed) "ANTH. PERRIER."

A somewhat more detailed statement of the incidents described in the foregoing Report has been recently furnished to Her Majesty's Government by Her Majesty's Consul at Brest. This statement is as follows:—*

Consul Clipperton to Earl Granville.

"My Lord,

"I have the honour to acknowledge the receipt of a despatch from the Foreign Office marked Separate, and dated 31st August last, instructing me to report to your Lordship all the information I

* Appendix, vol. i, p. 416.

Part VII.

The Georgia.

can obtain respecting the equipment of the Confederate cruiser Georgia, then known as the Japan or Virginia, off Morlaix, and the visit of that vessel to Brest, between the 4th and 9th of April, 1863, and to forward with my Report a small map or chart of the coast, explanatory of the proceedings which took place within or contiguous to the limits of French jurisdiction.

"In reply, I beg most respectfully to inform your Lordship that at Morlaix nothing is known of the Confederate cruiser Georgia, either under the name of Japan or Virginia, but the matter appears to have transpired near to Conquet, marked (A) on the accompanying chart, and was as follows:—

"On the 9th April morning, 1863, two English vessels, a brig and a steam schooner were seen in the Fromavour Channel between Ushant and the mainland (B), making signals for a pilot. Two pilots of Molène named Piton and Marec went on board. They were told that the vessels were the brig Japan, of Liverpool, and schooner Alar, of London, bound for Liverpool, with a general cargo.

"The Alar was represented to have sprung a leak, and had requested the brig to stand by her to render assistance if required. At about six in the evening of the same day the two vessels anchored in Bertheaume Bay (C), and efforts were made unsuccessfully, owing to heavy surf, to tranship part of the cargo from the schooner to the brig. The pilots proposed to take the vessels into Brest, but were refused. The two vessels got under way at 6 A.M. of the following day, the 8th, passed through the Conquet Channel, and anchored in Stiff Bay (D) under Ushant, where the transhipment was effected, and that same evening they sailed for Liverpool.

"The official Reports made to the Admiral of the port of Brest by the French Naval Agent at Ushant and the Custom-house officer, at Conquet, state that the schooner was sighted before the brig, and that both were seen hovering about for two or three days; they were both seen close alongside of each other, the schooner apparently discharging or trying to discharge cargo into the brig. After anchoring in Stiff Bay the transhipment was actively carried on until between 7 and 8 in the evening, at about which hour the brig went to sea.

"At about 10 o'clock of the same night cries and noise of putting out boats were heard at the Lighthouse, as if proceeding from the schooner. It is supposed that the schooner foundered, and that the boats went out to sea, as nothing further was ever heard of either vessel or crew.

"I beg further to inform your Lordship that two steam-vessels were constructed and partly fitted out at Nantes, during the war in America, for the Confederate States. On my return to my post I shall be in a position to forward all the information connected with them, should your Lordship consider it expedient for me to do so.

"I have, &c.
(Signed) "ROBT. CHAS. CLIPPERTON."

The places called Conquet and Bertheaume Bay, and mentioned in the two preceding Reports, are on the coast of France, in the department of Finistère. The Baie du Stiff, or Stiff Bay, is on the coast of the French island of Ouessant, or Ushant.

From the statements contained in the preceding depositions and Reports, it appears that the vessel afterwards called the Georgia sailed from Greenock under the name of the Japan, as a merchant-vessel, on a trading voyage to the East Indies, and that until she arrived off the coast of France her crew were not aware that this was not her true character and destination; that she was armed for war in French waters; and that she there took on board her Commander and officers, who then and there enlisted a crew.

With reference to Mr. Adams' Note of the 15th April, 1863, the following letter was on the 21st April addressed to him by Earl Russell:—

*Earl Russell to Mr. Adams.**

"Sir,

"Foreign Office, April 21, 1863.

"I stated to you in my letter of the 16th instant, that your letter of the previous day, respecting the case of the Japan, otherwise the Virginian, had been referred to the proper Departments of Her Majesty's Government, but I will not delay informing you that Her Majesty's Government have received from the authorities at Glasgow, and at Greenock, reports, from which it appears that that vessel was constantly visited while she was in course of construction, and that the surveys seemed to show that she was intended for commercial purposes, and that her framework and plating were of the ordinary sizes for vessels of her class.

"She was entered on the 31st ultimo, as for Point de Galle and Hong Kong, with a crew of forty-eight men. She shipped on the 1st instant the bonded stores stated in the margin,† and she cleared on the same day in ballast for Point de Galle and Hong Kong.

"Her Majesty's Government are further informed that the Japan left the anchorage early on the morning of the 2nd instant, with the ostensible purpose of trying her engines, intending to return, having on board several joiners, who were fitting up her cabins. These men, who are said to have been employed at a later time in fitting up a magazine, were subsequently landed on some part of the coast lower down the Clyde.

"The Custom-house officer who visited the Japan on the evening of the 1st instant to see that her stores were correct, reports that he saw nothing on board which could lead him to suspect that she was

* Appendix, vol. I, p. 418.

† 115 gallons spirits, 32 gallons wine, 244 lbs. tea, 159 lbs. coffee, 212 lbs. tobacco 10 lbs. cigars 18 cwt. 3 qrs. 2 lbs. sugar, 2 cwt. 2 qrs. 6 lbs. molasses, 2 cwt. 1 qr. 5 lbs. raisins, 1 cwt. 1 qr. 8 lbs. currants.

intended for war purposes. Her Majesty's Government are further informed that she was not heavily sparred, and that she could not spread more canvas than an ordinary merchant-steamer.

"I am, &c.
(Signed) " RUSSELL."

On the question whether persons who had joined the vessel, or who had induced others to join her, could be prosecuted as offenders against British law, the Law Officers, on the 30th April, 1863, advised as follows:—*

"In our opinion it is not competent to Her Majesty's Government at present to take any steps in the matter to which Mr. Adams' despatch of the 15th April refers.

"So far as relates to British seamen who have accepted the proposal made to them in French waters to engage in the belligerent service of the Confederate States, we think that they have offended against the 2nd section of the Foreign Enlistment Act, and will be liable to be proceeded against for a misdemeanour if they should be found within British jurisdiction; the first part of that section (which applies to the persons entering into such engagements) being in the form of an absolute prohibition, applicable generally to British subjects, without reference to the place where the act prohibited may be done. But, inasmuch as these seamen are not at present within British jurisdiction, no steps can now be taken for their prosecution.

"With respect to the seamen who have returned to this country, it seems clear that their conduct has been lawable, and not criminal. They were induced, by false and fraudulent representations, to enter into engagements at Liverpool for a perfectly lawful voyage, and afterwards, when apprised of the deception which had been practised upon them, and invited to enter an engagement of a different character, they refused to do so.

"With respect to Captain Hitchcock, and any other persons who may have been instrumental in inducing the crew of the *Japan* to take service in her before her departure from this country, it is clear that, (howsoever censurable their conduct may have been) they did nothing contrary to the Foreign Enlistment Act; for it was not until the ship was in French waters that any proposal appears to have been made to any of the men to enter into the belligerent service of the Confederate Government, and the latter part of the 1st section of the Foreign Enlistment Act (which applies to the case of persons 'hiring, retaining, engaging, or procuring' others to enter into the belligerent service of a foreign State) is expressly limited to acts done within the territorial jurisdiction of the British Crown."

On the 8th July, 1863, Earl Russell received from Mr. Adams a Note, in which referring to the *Georgia*, and stating (as the fact was) that his former representations concerning that vessel had unhappily been made too late for Her Majesty's Government to interpose effectively, he called Earl Russell's attention to the circumstance that she had been, and until recently was, registered in the name of a British subject. The portion of the Note in which reference was made to this matter was as follows:—

*Mr. Adams to Earl Russell.**

(Extract.)

"It is with great regret that I feel myself once more compelled to call your Lordship's attention to the circumstances attending the outfit of the steamer called the *Japan*. It now appears that that vessel was, at the time of her escape, and has continued until very lately to be, the property of a British subject, residing in Liverpool. That person is Thomas Bold, a member of the commercial house of Jones and Co. I have information which leads me to believe that only within a few days has Mr. Bold notified the Collector of Customs at Liverpool of his sale of this vessel to foreign owners, and requested the register to be cancelled. That act was not completed until the 23rd of June last. It would appear from these facts, should they prove to be true, that this vessel has remained the property of a British subject during a considerable time in which she has been engaged in committing extensive ravages upon the commerce of a nation with which Her Majesty is at peace. The fact of the outfit of that vessel for hostile purposes has already occupied the attention of your Lordship, in consequence of former representations, unhappily made too late for effective interposition. But the circumstances of the retention of the ownership by a British subject for so long a period after she was known to be engaged in hostilities against the United States, is of too grave a character to justify me in omitting to call your Lordship's particular attention to it, in advance of the possibility of receiving instructions respecting it."

On inquiry it appeared that the certificate of registry of the steamer *Japan*, which had on the 20th March been issued to Bold by the Collector of Customs at Liverpool, had on the 23rd June, 1863, been delivered up by Bold to the Collector, with the following letter:—†

* Appendix, vol. I, p. 419.

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† Ibid., p. 421.

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Mr. Bold to Mr. Edwards.

"Sir, "I beg to hand you the certificate of registry of the screw-steamer Japan, official No. 45,868, port No. 93, as I have conveyed the vessel to an alien.

"Liverpool, June 23, 1863.

"I am, &c.
(Signed) *THOMAS BOLD.*"

The circumstance that Bold's name had, on his own declaration, been entered on the register-book as the owner of the vessel, and had continued to be so registered till the 23rd June, did not render him responsible for acts done during the interval by the persons who had the actual possession and control of her, unless it could be proved that he was himself a party to such acts, of which there was no evidence. Nor could he have been prosecuted under the Foreign Enlistment Act for participating in an unlawful equipment of the ship, on proof merely that he was the registered owner, and without any evidence to show that he had been actually concerned in so equipping her within Her Majesty's dominions. Of this again there was no evidence. No proceedings, therefore, were or could have been taken against Bold. From a despatch addressed by the United States' Consul at Liverpool to Mr. Seward, dated 7th August, 1863, it appears that the Consul had in the preceding July consulted the legal adviser who had been employed by him in the matter of the Alabama (Mr. Squarey) on this subject, and Mr. Squarey advised as follows:—*

Mr. Squarey to Mr. Dudley.

(Extract.)

"10, Water Street, 1863.

"It does not appear to me the engagement of the crew can be treated as an offence against the Act, because the only legal contract binding upon the crew was that appearing upon the articles. The men were not liable to do anything except what they had agreed to do by the articles; and from the statements of the men whom I saw, it did not appear that they knew when they shipped that it was expected or intended that they should serve on board a man-of-war or privateer. As regards the liability of the British registered owner to make good to the owners of the American vessel destroyed the loss sustained by them, I conceive it must depend upon the question whether those in command of the vessel at the time can be considered to have been the agents of the British owner. If they were such agents, and there was any evidence to show that the destruction of the American ship could be considered as an act within the scope of their authority, I have no doubt that the owners would be liable; but it appears to me that the circumstances to which I have previously referred, go very far to rebut the presumption that such agency existed, and to prove that in destroying the American vessel the officers and crew were acting not for the British owner, but for the Government of the so-called Confederate States. In such case I do not think that any liability could be established against the British owner, for it is now well established that the mere fact of being on the register of the ship does not involve liability for the acts or engagements of the master and crew, and that such liability is in fact a question depending upon express or implied agency in every case.

"Although, therefore, I do not see how a British owner is to be made liable, there is, in my opinion, a case which justifies the American Government in bringing the matter before the notice of the British Government, and requiring explanations from that Government of the circumstances under which a British vessel is found to be engaged in the destruction of vessels belonging to American citizens."

With reference to this part of the subject, it may be here stated that, in the month of January 1864, a prosecution was commenced by the direction of Her Majesty's Government against two persons, named Jones and Highatt (who were admitted to be partners with Bold in the business of ship-storedealers and ship-chandlers, though not in that of ship-owners), for having, within the Queen's dominions, hired and procured men to engage in the service of the Confederate States by enlisting on board the Georgia. The case came on for trial at the Liverpool Assizes in August 1864, and the defendants were found guilty and sentenced to pay a fine. No evidence could be produced on the part of the prosecution to show that the men who shipped on board the vessel at Greenock had at that time, or when they were originally hired, any intention to enter the Confederate service, although there was evidence that the defendants hired them with the intention of afterwards inducing them to enlist in that service.

The Japan, after having been armed, was commissioned as a public ship-of-war of the Confederate States, under the command of a Lieutenant Maury, formerly an officer in the Navy of the United States, and under the name of the Georgia, by which name she was afterwards known.

In May 1863, she was admitted into the harbour of Bahia, and coaled there; on the 16th August she arrived at Simon's Bay, in the Colony of the Cape of Good Hope, and was allowed to repair and coal; and in October 1863 she is believed to have touched at Tenerife and coaled at that place. On or about the 28th October, 1863, she arrived in the roadstead of Cherbourg, and was shortly afterwards admitted into the dockyard for repairs. She was admitted as a man-of-war, on the order of the Minister of Marine, and her repairs (which were not extensive) were made by the dockyard workmen, and are stated to have been paid for at the usual rate of work done on ships of war, which is less than the rate charged for work done on merchant ships. She remained at Cherbourg during nearly four months. On the 25th March, 1864, she arrived at Pauillac, the boarding station of Bordeaux, and was reported as in want of repairs for her steam-machinery and of provisions. She was allowed to keep her gunpowder on board, on condition of mooring at Lormont, an anchorage a little distance below Bordeaux. Her machinery having been surveyed and certified to require a fortnight for its repair, she was given that time to remain at Lormont. She remained at anchor however until the 28th of April.*

Whilst the Georgia was at Cherbourg, the Florida being at the same time in the harbour of Brest, it was ascertained that some seamen had been induced to go from Liverpool to France in order to join those vessels. Four of these men were identified, upon inquiry made by order of Her Majesty's Government, as belonging to the Royal Naval Reserve, and they were forthwith discharged from the force. One Campbell, a keeper of a sailors' boarding-house at Liverpool, was found to have been concerned in inducing them to go, and was prosecuted and brought to trial, and pleaded guilty. It was deemed sufficient by the Judge to exact security against a repetition of the offence, by requiring him to enter into recognizances in the sum of 150*l.* to appear for Judgment when called upon.

On the 2nd May, 1864, the Georgia came into the port of Liverpool. Very soon after her arrival there, her crew were discharged, her warlike stores were lodged in warehouses (where they remained until after she left Liverpool, as hereinafter mentioned), and the vessel herself was removed to a dock at Birkenhead, dismantled, and offered for sale by public advertisement in the following terms:—

"For sale, the splendid screw-steamer Georgia, about 750 tons, builder's measurement; built by Messrs. Denny, of Dumbarton, 1863; has engines of 200 horse-power; speed, 12 knots; carries a large cargo; is abundantly found in stores, and ready for immediate employment. For specification and further particulars, apply to Curry, Kellock, and Co."

The reason given for selling her was that she was deficient in strength and speed, and was, by her construction, unsuitable for a cruiser.

Directions had been given, shortly after her arrival, that, if not *bond fide* sold, she should be ordered to leave the port as soon as she had received necessary repairs.

With respect to the manner in which these directions should be enforced, and the power to enforce them, the Law Officers of the Crown were consulted, and advised as follows:—†

"Opinion of the Attorney- and Solicitor-General.

"If the Georgia is still (as has been hitherto assumed) a public ship of war of a belligerent Power, she is, while within Her Majesty's dominions, exempt from all civil and municipal jurisdiction, and it is not, therefore, upon any civil or municipal law of this realm that Her Majesty's Government can act, if they should find it necessary to take any compulsory measures with respect to her; nor will the execution of these measures belong to the Commissioners of the Customs, or to any other civil authority.

"By the universal Law of Nations, and by the prerogative right of regulating the intercourse between this country and the public ships of war of a foreign Government, which belongs to Her Majesty in right of her Crown, it is competent for Her Majesty to prohibit the entrance of any foreign public ship of war into Her Majesty's territory, except under such conditions as she may think proper from time to time to impose; and if any such prohibition is not duly obeyed, it is, in our opinion, perfectly within the competency of Her Majesty to enforce its observance by her military or naval officers, and by the use of force, if necessary.

"If the Georgia has ceased to be a public ship of war of the Confederate States, and has been sold to and become the private property of any of Her Majesty's subjects, the case is different. Under these

* Appendix, vol. i, p. 442.

† Ibid., p. 458.

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circumstances, Her Majesty's orders would no longer be applicable to this ship; and of course, no forcible or other means could be used for the purpose of compelling their observance in a case to which they would not apply. The Georgia, after such a sale, would be exactly in the same situation as the Gibraltar (formerly called the Sumter) was last year: she would be governed by the ordinary municipal law of this country, like any other private ship, the property of British subjects.

(Signed) " ROUNDELL PALMER.
" R. P. COLLIER,

" Lincoln's Inn, May 23, 1864."

The vessel was sold to Mr. Edward Bates, a shipowner carrying on a very extensive business at Liverpool.

Mr. Adams, on being informed of the sale, wrote to Earl Russell, stating that, on behalf of his Government, he must decline to recognize the validity of it, and must claim the right to capture the vessel wherever she might be found on the high seas.

On the 27th July he again wrote to Earl Russell, suggesting that there was reason to suspect that the sale was fictitious, and the vessel intended to be again employed in the Confederate service.

To this letter Earl Russell replied as follows:—*

Earl Russell to Mr. Adams.

" Sir,

" Foreign Office, August 8, 1864.

" With reference to my letter of the 28th ultimo, I have the honour to state to you that Her Majesty's Government do not see sufficient grounds for coming to the conclusion upon the statements contained in your letter of the 27th ultimo, that the steamer Georgia is about to be again used for belligerent purposes. With a view, however, to prevent the recurrence of any question such as that which has arisen in the case of the Georgia, Her Majesty's Government have given directions that, in future, no ship of war of either belligerent shall be allowed to be brought to any of Her Majesty's ports for the purpose of being dismantled or sold.

" I am, &c.
(Signed) " RUSSELL."

The directions mentioned in the above letter were issued accordingly, and were notified in the "London Gazette" as follows:—

" Extract from the 'London Gazette' of September 8, 1864.

" Foreign Office, September 8, 1864.

" It is hereby notified that Her Majesty has been pleased to order, that for the future no ship of war belonging to either of the belligerent Powers of North America shall be allowed to enter, or to remain, or be, in any of Her Majesty's ports for the purpose of being dismantled or sold; and Her Majesty has been pleased to give directions to the Commissioners of Her Majesty's Customs, and to the Governors of Her Majesty's colonies and foreign possessions, to see that this Order is properly carried into effect."

On the 8th August, 1863, the Georgia, being then registered in the name of the said Edward Bates, sailed from Liverpool for Lisbon. Off Lisbon, and whilst on the high seas, she was captured by the United States' war-steamer Niagara, and was sent to Boston for adjudication.

Mr. Bates, her owner, thereupon wrote to Earl Russell as follows, complaining of the seizure of his ship—

Mr. Bates to Earl Russell.†

" My Lord,

" Liverpool, August 27, 1864.

" I beg to call your Lordship's attention to a very serious outrage which has been committed upon me by the United States' man-of-war Niagara, in having forcibly seized and sent to the United States my screw-steamer Georgia.

" This vessel was, in the month of May last, lying in the Birkenhead Dock, and was offered for sale by public advertisement by the well-known ship-brokers, Messrs. Curry, Kellock, and Co., of this town.

" I had her examined, and, thinking her a suitable vessel, I entertained an intention to purchase her. I knew she was the property of the Confederate Government, and thereupon, before completing a purchase, I communicated with the Custom-house authorities at Liverpool, in order to ascertain whether the authorities would grant me a British register, without which I should not have bought her.

" The Customs authorities took some time to consider, and, during all this period, the advertisement

* Appendix, vol. i, p. 459.

† Ibid., p. 464.

continued in the public papers, and I have no doubt that this public announcement was seen and well known to the American Consul at this port.

" Eventually, I was informed that a British register would be granted to me if I bought her. I concluded a purchase of her and paid for her on the 13th June last. The purchase-money I paid to Messrs. Curry, Kellock, and Co., and received a bill of sale signed by James D. Bullock. This document I presented at the Custom-house, where I made the usual declaration of ownership, and the ship was thereupon duly registered in my name.

" During the whole of this period she was in a public dock, open to the inspection of the public, and where I dismantled her, and proceeded to alter and repair her. All this time I did not receive any intimation from either my Government or from the American Consul or other authorities that my purchase was invalid.

" In July I received overtures from Messrs. Bennett, of London, through Messrs. Mescock, of Liverpool, as brokers for the Portuguese Consul in London, for a charter of the Georgia on time to the Portuguese Government. I eventually accepted this charter, and then proceeded to fit her up in accordance therewith, as a mail and passenger boat.

" Whilst she was being thus fitted up the Niagara visited the Mersey. The vessel was still open to inspection, and I have reason to believe that the officers of that vessel did inspect her, but no intimation was made to me of the intention to seize my property as soon as she should get into open waters.

" So secure did I feel in the possession of my property that, although the Consul-General for Portugal conveyed to me his feeling of apprehension of the Niagara, I scouted the idea as something unworthy of credence, and on the 8th August she sailed from the Queen's Dock in Liverpool for Lisbon, there to run in the service of the Portuguese Government, from that place to the coast of Africa and back, with mails, goods, and passengers. On the completion of this service the Portuguese Government covenanted and agreed to deliver my ship to me in the port of Liverpool.

" Your Lordship may therefore conceive the astonishment and indignation with which I received the intelligence on my return to Liverpool of the vessel having been seized off Lisbon by the United States' steamer Niagara, and sent to Boston.

" I am well known in Liverpool as an extensive shipowner.

" I have no connection with the Confederate Government or their agents, and never have had, directly or indirectly.

" I bought the vessel for the purposes of my own business, on an arrangement with the Custom-house authorities that I should receive for her a British register, and in the belief that a British register would protect my property from the outrage which has been practised upon me.

" I respectfully submit these facts to your Lordship's consideration, and trust that Her Majesty's Government will forthwith take such steps as they may deem necessary in order to procure for me a restitution of my ship, and compensation for the injury I have sustained.

" I have, &c.
(Signed) " EDWARD BATES."

Mr. Bates was informed in reply, that the question must go before a Prize Court in the United States, and that he must be prepared to defend his interest therein. The view entertained of the case by Her Majesty's Government was afterwards more fully explained to him in the following letter:—*

Mr. Hammond to Mr. Bates.

" Sir,
" I acquainted you shortly, by Lord Russell's direction, in my letter of the 9th instant, that the case of the Georgia must go before the Prize Court in the United States, and that you must be prepared to defend your interest therein.

" I am now further to acquaint you, in reply to your letter of the 27th ultimo, that, having consulted the Law Officers of the Crown, Lord Russell desires me to state to you that the Niagara, in capturing the Georgia and sending her into a Prize Court for adjudication, which it is to be assumed will be the course she will pursue, has not exceeded the limits of her belligerent rights.

" If the Georgia had formerly belonged to the mercantile marine of the Confederate States, and been the property of a private subject of the Confederate States, the United States' cruiser would have been justified in seizing her upon the high seas, and in taking her into a Prize Court for the purpose of submitting to proper judicial investigation the question whether the transfer of an enemy's vessel to a neutral *flagrante bello* had been *bona fide*, and executed in the manner and in the circumstances which international law requires. But it is a fact beyond the reach of controversy or denial that the Georgia had formed, till a very recent period, part of the Confederate Navy. The belligerent, therefore, had *a fortiori*, the right to seize her and endeavour to obtain her condemnation in a Prize Court. That Court will have to determine not only the question whether the transfer of the Georgia to a neutral owner was real, and accompanied by an entire extinction of all the interests and rights of the former hostile owner, but the much graver preliminary question whether (as against the right of capture of the other belligerent) a ship of war can be lawfully transferred by a belligerent *flagrante bello*, in a neutral port to a neutral, with whatever publicity and however completely the transfer may have been actually made, and whatever alterations the structure, equipment, or employment of the vessel, *so de facto* transferred, may have undergone while in the possession of the neutral.

* Appendix, vol. i, p. 468.

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"Lord Russell is further advised that the officers of the Custom-house at Liverpool, in granting to this vessel, upon the production of proper documents, a British register, merely acted in conformity with the municipal laws of this country, which neither undertakes to assist and facilitate, nor pretends upon the high seas to overrule or supersede the right of maritime capture belonging to a belligerent under the law of nations as administered in Prize Courts; and that it was certainly no part of the duty of Her Majesty's Government to inform a private individual who might entertain the idea of purchasing this vessel of any risk which he might incur by so doing. Nor is Lord Russell aware of any obligation imposed by international law and comity upon the Representatives or Agents of the United States in this country or upon the officers of the Niagara, when at Liverpool, to give any notice or intimation whatever that the Niagara or any other cruiser of the United States might still consider the vessel a proper subject of capture, whether transferred or not to a neutral, and under whatever register or flag she might sail.

"I am to add that the application contained in your letter of the 10th instant for documents in the case is now under consideration, and that an answer will be returned to you as soon as possible.

"I am, &c.
(Signed) "E. HAMMOND."

Summary.

The Georgia was a vessel built at Dumbarton in Scotland, and sent to sea from the port of Greenock. For whom she was built, and by whom and under what circumstances she was sent to sea, are matters as to which Her Majesty's Government has no information beyond what has appeared in the foregoing statement.

The Georgia neither appeared to be, nor was, up to the time when she sailed from the port of Greenock, fitted out, armed, or equipped for war, nor specially adapted to warlike use. She appeared to be constructed and intended for a ship of commerce. She proved, in fact, to be not fitted for employment as a cruiser, and for this reason she was dismantled and sold, after having been at sea for about nine months altogether, exclusive of the time during which she remained in the harbours of Cherbourg and Bordeaux.

She was registered under the name of the "Japan," in the name of a Liverpool merchant, and was entered outwards and cleared in the customary way for a port of destination in the East Indies. She was advertised at the Sailors' Home in Liverpool as about to sail for Singapore, and her crew were hired for a voyage to Singapore or some intermediate port, and for a period of two years. The men, when they were hired, believed this to be the true destination of the ship, and her voyage to be a commercial one; and they appear to have continued under this belief until after the vessel had arrived off the coast of France.

She was armed and equipped for war in the waters of France; she there took on board her Commander and officers; and her crew were enlisted there, the crew who had shipped at Greenock having been released from their agreement, and provided with the means of returning, if they chose to do so.

Her officers and armament appear to have been conveyed to the French coast, or its immediate vicinity, in a steamer which had cleared from Newhaven in ballast for Alderney and St. Malo, and which was stated to be a regular trader between Newhaven and the Channel Islands. The master of the steamer stated that the persons whom she conveyed were taken on board as passengers.

Her Britannic Majesty's Government had no reasonable grounds to believe that the vessel was intended to cruise or carry on war against the United States until after she had departed from the waters of Great Britain and arrived in the waters of France. The Government had indeed no knowledge or information whatever about her, previous to the receipt by Earl Russell of Mr. Adams' note of 8th April, 1863.

"Information about the construction and outfit of the vessel" had, for a long time before her departure, been in the possession of Mr. Adams; and Mr. Dudley, who was (as it was his duty to be), in constant communication with Mr. Adams, knew of the hiring of seamen for her, and had her examined by a man sent on board by him for that purpose. The information possessed by Mr. Adams, was not, however, in his opinion, such that proceedings could be founded upon it; and no communication was made by him to Her Majesty's Government on the subject until six days after the ship had sailed. At that time Mr. Adams had received further information (which proved to be erroneous), that the vessel was to receive her armament at Alderney, within the Queen's dominions; and he then made up his mind to "send notice of it to the British Government, and leave it to them to act in the case as they might think fit." The vessel did not go to Alderney; and Mr. Adams' communication was (in his own words) "too late for effective interposition."

The Georgia, after having been armed for war in French waters, was commanded by an officer commissioned as such by the Government of the Confederate States. Her officers were, as Her Majesty's Government believes, Americans belonging to those States. Of the composition of her crew, Her Majesty's Government knows nothing, except that it appears to have consisted, in part at any rate, of British subjects, who were induced by the persuasion and promises of her Commander to take service in her whilst she was in French waters.

The Georgia was received as a ship of war of the Confederate States in the neutral ports visited by her, particularly in those of Brazil and France. On the same footing, and in the same manner, without favour or partiality, she was received in a port of the Colony of the Cape of Good Hope, and in a port within the United Kingdom.

After having been disarmed, dismantled, and sold in a British port, the Georgia was captured at sea by a United States' cruiser, as having been a ship of the Confederate States, and incapable of being transferred, during the war, to a British subject. Her Britannic Majesty's Government, whilst it saw no reason to doubt that the sale had been *bona fide*, did not dispute the right of the United States to capture the vessel for the purpose of submitting the validity of the transfer to the judgment of a Prize Court.

During the cruize of the Georgia, which lasted (as stated above) about nine months, exclusive of the period of her stay in the harbour of Cherbourg, no serious endeavour to intercept or capture her appears to have been made on the part of the Government of the United States.

Her Britannic Majesty's Government cannot admit that, in respect of the Georgia, it is justly chargeable with any failure of international duty, for which Great Britain owes reparation to the United States.

Part VIII.

The Shenandoah.

PART VIII.

Statement of Facts relative to the Shenandoah.

On the 12th November, 1864, Earl Russell received from Her Britannic Majesty's Consul at Teneriffe a Report dated the 30th October, 1864, from which it appeared that a vessel bearing the name of the Sea King, from London had shortly before that date arrived in the vicinity of the Madeira Islands; that she had there received on board guns and a small number of men from a British steamer called the Laurel; had been taken possession of by a person claiming to be her commanding officer in the name of the Confederate States, and had hoisted the Confederate flag. This Report was as follows:—*

Consul Grattan to Earl Russell.

" My Lord,"

" *Teneriffe, October 30, 1864.*

" I have the honour to inform your Lordship that the British steam-vessel Laurel (47,819) of the port of Glasgow, bound from Liverpool to Nassau, arrived here on the 21st instant for the purpose of coaling.

" The master, J. F. Ramsey, on presenting himself at this office, stated that he wished to land 43 passengers, who were to proceed to England by the next Liverpool steamer, and that these persons were the master and crew of the British steamer Sea King, (Official No. 48,547) of London, which vessel had been wrecked off the Desertas. The Laurel continued her voyage on the 22nd instant. The master, on getting up steam, and not before, landed the above-mentioned seamen.

" The master of the Sea King, P. S. Corbett, did not call at this office, as is usual in such cases, either for the purpose of making a protest or to claim assistance. Therefore, on the 25th instant, I sent to desire his attendance, and demanded the certificate of registry of his vessel, in pursuance of instructions contained in No. 13 Paragraph of the Board of Trade Instructions. On handing in his certificate he informed me that his vessel had not been wrecked, but that she had been sold in London, and delivered to her owners on the high seas; and that himself and his crew had landed here for the purpose of returning to England as passengers in the West Coast of Africa mail-steamer, due at this port on the 31st instant.

" The discrepancy between the statements of the two masters led me to seek for further information respecting this matter, and the substance of the declaration I have obtained from George Kelly, Edward Everall, John Ellisen (Royal Naval Volunteers, 18,536), and John Hircus, all seamen belonging to the crew of the steam-vessel Sea King, is as follows:—

" The Laurel sailed from Liverpool bound to Nassau with 24 supposed officers and 17 seamen, besides her own crew, 45 to 60 shells, about five tons of gunpowder, and various other munitions of war; she proceeded to Madeira, where she took about 300 tons of coals. The Sea King sailed from London on the 7th instant, and also proceeded to the offing of Funchal Roads. Both vessels then steamed to a place off the Desertas, where the sea was smooth, and the officers and men, arms and munitions of war, were transhipped from the Laurel to the Sea King on the 20th instant. The cases of arms were at once opened, and the seamen armed themselves with cutlasses and revolvers. One of the officers then took command of the vessel in the name of the Government of the so-called Confederate States of America. Some of the crew of the Laurel joined the Sea King, the remainder of her intended crew are to be sent out from England."

" The 42 seamen now here, in charge of the former master of the Sea King, awaiting a passage to England, refused to join the Confederate vessel, though as much as 17*l.* per man was offered to them as bounty.

" In consequence of having become aware that a serious offence against British law has been committed on board a British ship, I have thought it my duty to take the depositions, upon oath, of four of the seamen of the Sea King, which I have the honour to forward to the Board of Trade, according to instructions.

" These depositions, in my opinion, contain evidence sufficient to substantiate a charge against the master, P. S. Corbett, of an infringement of the Foreign Enlistment Act; I therefore, pursuant to paragraph 127 of the Consular Instructions, deem it proper to send the offender in safe custody to England, in order that cognizance of the offence may be taken.

" I am satisfied that the 42 seamen now here are about to proceed to England by the West Coast of Africa mail-steamer, which leaves this port for England on this day.

" I have, &c.
(Signed) " HENRY C. GRATTAN."

Inclosed in the above Report were depositions on oath made by several seamen, of

* Appendix, vol. i, p. 477.

whom two belonged to the Royal Naval Reserve and all had refused to take service on board of the Sea King when she was declared to be a Confederate ship of war; and also a statement signed by the master of the Sea King.

These depositions were as follows:—*

Deposition of John Ellison, R.N.V., 18,536.

"I signed as quartermaster in the Sea King on or about the 8th of October, 1864; proceeded to sea; after several days we came off Madeira; on the same night a steamer went into the port of Madeira; on the following morning the Sea King went into the bay, and signalled to the steamers that were lying there, and after two hours the Laurel came out to sea, and signalled to the Sea King, and was answered by hoisting No. 3 pendant, which I hoisted myself. I was ordered by one of the passengers to hoist this pendant; the captain was on the poop at the time, and, turning round, said to me these words, Who ordered that pendant to be hoisted? haul it down immediately; which I did. After this flag was hauled down—about three-quarters of an hour afterwards—the Laurel anchored off what I believe to be the Desertas; the Sea King anchored within about 30 yards of her. The Captain of the Laurel was on the forecastle; our captain said, I will come alongside of you directly, and he did so. In the meantime the men were erecting tackles, rigging purchases to the port main-yardarm, and preventer lifts and rolling tackle ready. After this, commenced to take in large heavy cases from the Laurel, I think four or five, by means of other purchases. Small cases and casks of powder were taken in forward; all lights ordered to be put out. These orders were given by some of the passengers of the Laurel, who had embarked on board the Sea King, and not by our captain. One of these passengers told us that he was the captain, and had charge of the ship, and ordered our captain to hoist the Confederate flag, which was done. Shortly after, our captain gave orders for all hands to lay aft; when the men were aft, our captain came out of the saloon with our articles in his hand, and said, Well, men, I have sold the ship. Immediately, the captain that had charge came out alongside of him. Captain Corbett said to us, This gentleman is offering 4*l*. for able seamen. I was standing close to the captain at the time, and I said to him, I agreed with you in London to go to Bombay, which I have my naval certificate to prove. I told him, You have broken your agreement; why are we not proceeding to Bombay? He said, Well, men, I cannot help it; and, buttoning up his coat, he said, Follow me (and ran to the gangway), I am off. I said, Let him go; this is the ship we have earned our money in, and ought to have it out of. After he had gone, one of the passengers said to me, Why cannot you go in this ship? it is good money. I said I had never earned a shilling in America in my life, and therefore I did not wish to fight for it; that England was my country, and I was not ashamed to own it. He said, Why? I said, You do not know where I belong to; do you see this on my cap? I had the Naval Reserve cap on at the time. If I were to desert from this you could not place any confidence in me; you may try, but it is of no use, I have got the wrong heart in me for this, so you have no need to try me any more. I said to Captain Corbett, I stop in the ship till I get my money down on the captain-head. He said, Men, I have no money to pay you. I said, You have sold the ship; what have you done with the money? He said, I have no money to pay you here; he said I talked too much. I said, I will see you when I get to England. The other Royal Naval volunteer on board the Sea King told me that Captain Corbett had offered him between 15*l*. and 20*l*. bounty, and about 10*l*. per month, as near as I can recollect; he refused this, and in about half-an-hour all the men went, without being paid, on board the Laurel. The Laurel went to reconnoitre a ship which hove in sight, and came back and signalled that she was a Hamburg vessel. The Laurel laid off about an hour and a-half, trying to persuade us to join the Sea King, Captain Corbett doing his uttermost to this end. When he found it no use they hoisted the boats and proceeded to Teneriffe, where we arrived on 20th, at night, and were not allowed to land until the 22nd. When the steam was up, ready to depart, the chief officer came forward to the men of the Sea King and said, If anybody asks you where you came from, say you are castaway seamen, and tell the Consul the same, if required.

(Signed) "JOHN ELLISON.

"This deposition was made before me, and read over to the deponent.

(Signed) "HENRY C. GRATTAN, Consul.

"Teneriffe, October 29, 1864."

Deposition of John Allen, R.N.V., 950.

"I shipped in the Sea King for a voyage to Bombay and China; voyage not to exceed two years. After we got clear of the Channel we stopped the steam and proceeded under double-reefed topsails, dredging along for about three days, as far as I recollect, looking for something. We then made sail and carried on until we came to the island of Madeira, ran in past it at night, then rounded the vessel to, and stood out again till 4 the next morning; then got steam up and stood in for the harbour again. When we got abreast of the harbour we hoisted our number, which was answered by the Laurel steam-boat lying at anchor. Directly altered the ship's head outward, and stood away from the harbour. Then we were followed by the Laurel steamer, which got under weigh directly we signalled her; then we laxed our steam until she came up to us, she then signalled to us when she was going. Immediately we set full steam on and made all sail. We ran for about two hours and a half, when the steamer rounded an island, and we followed her, taking in all sail; and going up under easy steam, brought the ship to an anchor in 17 fathoms. A boat from the little steamer came alongside of us, with the Captain in her, and told our captain that he would be alongside of him in a few minutes. Then we commenced to secure our mainyard and get a pendant from the mast-head, and got the tackle hooked

* Appendix, vol. i, p. 478.

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on all ready for taking some heavy weight on board. Then the Laurel came alongside us, and we commenced slinging the cases until about 9 o'clock, likewise cases of powder, which was carried to the after cabin and stowed away; likewise large cases of shell and shot; also cases of rifles, and a great many cases of clothing. About 9 o'clock we went to our supper. Went to work again about half-past 9, and continued working till about 2 in the morning taking in kegs of powder; all lights ordered to be put out. They gave us a glass of grog and let us go to bed about 2 o'clock next morning. We were not asked to turn to work. After breakfast the hands were all to come aft. When we were all mustered aft, Captain Corbett waited for the person who proved to be the Captain, and took charge of the ship. Then he addressed us in this manner: Men, I have sold the ship; you who like to step in her, you will get very good wages, and I will give you two months' pay. The men refused to do so. The new Captain spoke to the men and told them he would give them two months' advance, 7*l.* per month, and 10*l.* bounty if any of them would join him. The third engineer and two or three of the firemen joined him. The new captain came to me whilst I was on the poop, it being my watch, and tried all he could to persuade me to go with him; offered me 14*l.* a month to go as gunner's mate, which I told him plainly I dare not do, as I belonged to the English Navy already, and I dare not go into any other. When they found they could not persuade me, they went to Captain Corbett to try if he could not advise me to do so. As I came off the poop, as all hands were standing round the cabin door to see the Captain, the Captain, Captain Corbett, came out of the cabin and called me in, and told me I was very foolish to lose such a good chance. I told him I would not go for double the amount. He said when he went home he would not report me, nor let it be known where I was, if I would go, and I thanked him, and told him I would go home and report myself, and walked out of the cabin. The Captain came on deck and the men asked him to give them three months' wages before they would leave the ship, which he refused to do. He said, there is the steam-boat, and you can come along with me. He told us he would take us to England and discharge us, and if the law would allow us anything he would give it to us. Seeing it was no use hanging on any longer, we put our things on board the steam-boat and waited for the captain; as soon as he came on board the steamer shoved off, got her steam up, and at this time a sail hove in sight, and the captain lowered his boat and went on board the Sea King. Again pulled back as quick as he could, and put to sea, till he made out what the vessel was, and then stood back for the Sea King again to let her know it was all right. We hovered off and on till about 5 or 6 in the evening, as the Captain could not get any of us to join. Some of the little steamer's hands went. Turned away and made our passage towards Teneriffe. On arriving there were not allowed to land until the Laurel was ready for sea with her steam up.

"The above has been read over to me and is correct and true.

(Signed)

"JOHN ALLEN, his *pc* mark.

"This deposition was made before me.

(Signed) "HENRY C. GRATTAN, Comml.

"Teneriffe, October 29, 1864."

Deposition of Thomas Everall.

"I signed as ordinary seaman in the Sea King, on or about the 8th of October; sailed from London, suppose to be going on a voyage to Bombay, &c., voyage not to exceed two years. When the vessel left there were two persons on board not belonging to the crew; one of these persons went ashore at 1*o'clock*, the other proceeded on the voyage with us. About ten days after leaving London we hove to before the Island of Madeira, after having been dodging about all night. We signalled to some vessel inside the harbour, and soon after a steamer came out; we accompanied her to an island about 50 miles from Madeira. As soon as we had let go our anchor the other vessel came alongside of us, and we began to tranship guns and ammunition into the Sea King. We worked till late, and when we had done the mate came into the forecastle and told us that the Sea King was sold to the Confederate Government for a privateer, and if we liked to join we should get 4*l.* 10*s.* a month, two months' wages from the Sea King, two months' advance from the Shenandoah (the name given to the Sea King), and 10*l.* bounty. Next morning, after we had finished the transhipment, Captain Corbett called the hands aft and corroborated the mate's statement, further saying that, if we did not like to join he would give us two months' wages and pay our passage to England. We would not agree to this, so he said we must go in the steamer alongside, and we said we would settle it when we got to England. The new Captain of the Sea King then offered us 6*l.* per month and 15*l.* bounty; then afterwards raised his offer to 7*l.* per month and 16*l.* bounty, but only two lads joined. We then took our clothes on board the Laurel, and we left the Shenandoah in the evening; she hoisted the Confederate flag. The passenger who went out with us was the First Lieutenant. We arrived at Teneriffe next Thursday, and landed the Saturday following, and have since been living at the Captain's expense, waiting for the mail-boat to take us home.

"The above has been read over to me, and is correct and true.

(Signed)

"THOMAS EVERALL.

"This deposition was made before me.

(Signed) "HENRY C. GRATTAN, Comml.

"Teneriffe, October 29, 1864."

Deposition of George Kelly.

"The Sea King sailed from London on the above voyage; as soon as she got clear of the Channel the steam was taken off, and some of the sails put her under easy canvas. We said, There is something strange, or the Captain would be more anxious to proceed on his voyage. We had one passenger on board who was afterwards said to be the First Lieutenant. The sailmaker was making a few hammocks for some of the men forward, and this passenger gave him orders to make twelve; from this we supposed

this person was not a passenger. On Monday night or afternoon came off Madeira and dodged off and on until Tuesday morning, then the Captain gave orders to the engineer to put on full steam till he got outside the town. He hoisted signals; they were answered by a steam-boat that was lying inshore; then we kept off again for a couple of hours. The steamer which signaled us came out, and both steamers hoisted signals. We made all steam and sail towards the lee of an island; we anchored there, and the other steamer came alongside of us. The boatswain ordered us to secure the mainyard with a topsail-sheet, and to put tackles for taking in three tons weight. We took in some heavy cases, and also four cases of shot and shell, which we knew to be such, as some tumbled about the decks. There were some gun carriages in cases and some without; the cases containing the gun-carriages were partly open. Several bales of clothing and beds were transhipped. The Captain came to us, and told us he had sold the ship; that the Captain who now had the ship would give us £1. 10s. a month and 10s. bounty, and he himself would give us two months' wages if we would join the ship. He then raised his terms to £1. and 7s.; 10s. bounty. We refused to go in her. One engineer, a boy and an ordinary seaman stopped, I believe. The Captain told us to go on board the Laurel; that he would pay our passage home. We went on board. We received no wages. We dodged off and on. The Confederate flag was hoisted after we left the ship. We then came down to Teneriffe.

"The above has been read over to me, and is correct and true.

(Signed) "GEORGE KELLY, his $\frac{1}{4}$ mark.

"This deposition was made before me.

(Signed) "HENRY C. GRATTAN, Consul."

The master's statement was as follows:—*

Statement of the Circumstances under which the British Vessel Sea King, Official No. 48,547, of London, has been Sold by Mr. P. S. Corbett, the Master thereof.

"The above vessel left London on the 19th of October, 1864, bound to Bombay, calling at port or ports on the passage. The cargo consisted of coals and provisions for the voyage. There were no munitions of war whatever on board. I held a certificate of sale from the owner. On the 19th of October I sold the said ship, receiving the amount agreed upon as per bill of sale. I am not aware that by the said sale I in any way infringed the Foreign Enlistment Act.

(Signed) "P. S. CORBETT.

"This statement was made before me.

(Signed) "HENRY C. GRATTAN, Consul."

"Teneriffe, October 29, 1864."

The Law Officers of the Crown were forthwith requested to advise the Government as to the course which should be taken in relation to the facts stated in the above Report.

On the 14th November, 1864, the Law Officers reported their opinion as follows:—†

The Law Officers of the Crown to Earl Russell.

"My Lord,

"Lincoln's Inn, November 14, 1864.

"We are honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us a copy of a despatch received on the 12th instant from Her Majesty's Consul at Teneriffe, reporting the circumstances under which a number of men had been landed at that port from the British steamer Laurel, and the part taken by that vessel in the equipment at sea of the British steamer Sea King as a vessel of war for the Government of the so-called Confederate States. That Mr. Consul Grattan states that he had taken the depositions on oath of four of the seamen of the Sea King, who were landed from the Laurel, and that he had deemed it proper to send Captain Corbett to England in safe custody to answer a charge of having infringed the Foreign Enlistment Act.

"That your Lordship had ascertained that the depositions had not yet reached the Board of Trade, and that your Lordship was unable, therefore, at present to submit them for our consideration; and Mr. Layard was directed, however, to send us at once the Consul's despatch, as well as a copy of a telegram received at the Board of Trade, announcing the arrival of twenty-two of the men at Liverpool, and to request that we would take these papers into consideration, and furnish your Lordship with our advice as to the course which should be adopted by Her Majesty's Government in this matter.

"We are also honoured with Mr. Layard's letter of this day's date, forwarding the depositions in the case of the Sea King.

"In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

"That we think the depositions taken at Teneriffe, and forwarded to Her Majesty's Government by Mr. Consul Grattan, do not support the conclusion arrived at by the Consul, that Captain Corbett (whom we understand to have been in command of the Sea King until she was handed over to certain agents of the Confederate States off Deserts) is chargeable with any offence against the Foreign Enlistment Act. To constitute an offence under the 7th (the Equipment) Clause of that Act, there must have been an equipment, &c., with a view to employment in the belligerent service of a foreign

* Appendix, vol. i, p. 481.

† Ibid., p. 482.

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Power, within some part of the United Kingdom, or of Her Majesty's dominions beyond the seas. In like manner, to constitute an offence (by a person not himself enlisting, &c.), under the 2nd Section such person must have been concerned within the United Kingdom, or in some part of Her Majesty's dominions elsewhere, in inducing or procuring others to enlist, &c., or to go, or to agree to go, or embark for some part of Her Majesty's dominions for the purpose or with intent, to be enlisted, &c.; and to constitute an offence under the 6th Section, the master or other person in command of a ship or vessel in some part of the United Kingdom, or of Her Majesty's dominions beyond the seas, must knowingly and willingly have taken, or engaged to take, on board persons who had enlisted, or had agreed, &c., to enlist, &c., or who were departing from Her Majesty's dominions for the purpose and with the intent of enlisting, &c.

"In every one of these cases the criminal act must have been committed within some part of 'Her Majesty's dominions,' a word which, as here used, does not, in our opinion, include a British ship on the high seas. But all the facts mentioned in these depositions appear to have taken place upon the high seas, beyond the limits of Her Majesty's territory. It is, indeed, not improbable that in the preparation of the Sea King for her voyage (if she went to sea under Captain Corbett's command from any port in this country), an offence against the 7th Section of the Act may have been committed. It is also possible that the officers and men, or some of them, may have been hired and taken on board in this country with a view to employment in the Confederate service, so as to constitute offences against the 2nd and 6th Sections, or one of them. But there is no evidence to support either of these conclusions in the depositions taken at Teneriffe by Consul Grattan.

"All, therefore, that we can now advise your Lordship to do is to direct that the twenty-two men, or some of them, who have just landed at Liverpool, be immediately examined by the Solicitor to the Treasury, or some person deputed by him, and their evidence reported to us; and that the Solicitor be directed to obtain such other information as may be accessible in this country with respect to the previous history of the Sea King, the nature and circumstances of her equipment, the engagements of her crew, and the persons concerned therein, if there should be reason to believe that she sailed from this country with the view of being employed as a ship of war in the Confederate service.

"We have, &c.

(Signed) "ROUNDELL PALMER.
" R. P. COLLIER.
"ROBERT PHILLIMORE."

The Lords Commissioners of the Treasury were requested to give immediate directions to their Solicitor, in conformity with the concluding paragraph of the Law Officers' Report.

On the 19th November, 1864, Earl Russell received from Mr. Adams a Note,* submitting for Earl Russell's consideration a copy of a letter from Mr. Dudley relating to the Sea King, together with copies of two depositions made by seamen who had shipped on board of that vessel in the port of London, and who had returned to England from Teneriffe in the mail-steamer Calabar.

These depositions, though containing some statements which were clearly erroneous, confirmed, in general, the truth of those sent to the Foreign Office by Consul Grattan.

With reference to the original hiring, one of the deponents, John Hercus, deposed as follows:—†

"On or about the 25th of September last past, I and John Wilson, a ship's carpenter, were looking for a ship in London, and went on board the steam-ship Sea King, lying in the East India Dock, and spoke to the Chief Mate. He pointed out the Captain, whose name, we were informed, was Corbett, and we spoke to him about going on the ship. He asked us if we were single men, and said he wanted all single men if he could get them. He told me that the ship would be ready in ten days or a fortnight, and if I liked to wait he would give me the chance. He asked the carpenter if he could come to work at once, and he agreed to do so, and went to work the next morning. On or about the 5th of October I went to the Sailor's Home, and there signed articles as able seaman at 21. 10s. a-month for a voyage to Bombay, thence to any port or ports in the Indian Ocean, or China Seas, Japan, or Australian Colonies, Pacific or Atlantic Oceans, and back to a port in the United Kingdom, voyage not to exceed two years. I received a note for a month's advance, which I got cashed at Isabella Calder's, No. 6, Bird Street East, London.

"On Friday, the 7th of October, I took my clothes on board, when we were told she was not going until Saturday morning, the 8th."

The other deponent, who was the John Wilson referred to in Hercus's statement, deposed to a like effect as to both the terms and the mode of hiring.

With reference to the persuasions used in order to induce the men to enlist in the service of the Confederate States, the said John Wilson deposed as follows:—‡

"After we had finished taking in the things from the Laurel, the mate came and called all hands aft, and said the captain wanted to see us. We all went and gathered round the cabin doors, and Captain Corbett came out and said, 'Well, men, I have sold the ship to the Confederates; she is to

* Appendix, vol. i, p. 484.

† Ibid., p. 485.

‡ Ibid., p. 485.

belong to their navy to be a cruiser, to burn and destroy merchant-vessels and whalers in particular. She is not to fight, but merely to take prizes, and there will be a first-rate chance for any of you young men who will stop by the vessel, and I should advise you all to do it.' The general reply made by the men was, that we did not want anything to do with her. The new captain then came out of the cabin and asked if we would not join. He was dressed in a grey uniform. Captain Corbett introduced the men when he came out as the American officer who was to have the command of the ship, but did not mention his name; said he would pay the seamen 4*l.* per month, and 10*l.* bounty. One of the engineers, one of the firemen, and two of the seamen consented to join, and took the bounty and signed the articles. The officer in uniform, when he came out to us, announced that the Sea King was now the Shenandoah of the Confederate navy. Liquor had been served among the men during the time we were making the transfer in profusion. Some were under its influence. It was brought round twice after we got through, and offered to the men. They made great efforts to induce the men to join. They raised the wages to 7*l.* and 15*l.* bounty for able seamen. They offered me 16*l.* a month and 15*l.* bounty. I declined to accept it, or to stop with them on any terms. A bucket of sovereigns was brought out on the deck to tempt the men to join. A portion of the crew of the Laurel joined. The person whom Captain Corbett introduced to us as the commander of the Shenandoah came out on the Laurel; there were a number of others who also came out on the Laurel; I should say about forty. We left them on board the Shenandoah. Some were acting as officers. One of them, pointing at the commander, who was standing on the deck, said he was Captain Semmes."

Hercus deposed to the same effect. Describing the inducements offered to the men, he said:—*

"I said I should not join, but four others said they would. One was a fireman, one an engineer, and two were ordinary seamen. They were under the influence of liquor, which had been supplied freely to all who would take it since we commenced taking in the guns. When they found us unwilling to go the wages and bounty were increased, until we were offered 7*l.* a month and 16*l.* bounty, and to sign the articles for six months. A bucket containing sovereigns was brought on deck, and the officers took up handfuls to tempt the men on deck. The four who consented to go went into the cabin, and I afterwards saw one of them with twenty-eight sovereigns in his hand."

He added:—

"When the American officers who came from the Laurel to the Sea King were trying to persuade us to go in her they said, 'You had better go in the Shenandoah' (which the Sea King was to be called). They promised us the best of living, and said that the best of the provisions would be taken out of the prizes, and all that were then aboard which were no good would be thrown overboard."

It was stated by the deponents that the officers who had gone out in the Sea King, including the captain, returned in the Calabar to England. The only exception was one of the engineers. The statement that Captain Semmes was on board of the Sea King was erroneous.

The copies of depositions sent by Mr. Adams were immediately laid before the Law Officers of the Crown, who, on the 1st December, 1864, advised thereon as follows:—†

The Law Officers of the Crown to Earl Russell.

"My Lord,

"*Lincoln's Jus., December 1, 1864.*

"We are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that, with reference to our Report of the 15th November, he was directed by your Lordship to transmit to us a letter from Mr. Adams, inclosing copies of the depositions of two men who lately formed part of the crew of the Sea King, and to request that we would take these papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

"Mr. Hammond was also pleased to state that we should observe from the accompanying draft of a letter to the Treasury that the Lords Commissioners have been requested to instruct their Solicitor to take the depositions, and to proceed in this case in other respects in the manner recommended in our Report; and that a despatch of Mr. Consul Grattan was also inclosed.

"In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

"That, in our opinion, the depositions now forwarded by Mr. Adams are sufficient to prove that Captain Corbett did in this country engage and procure the deponents to serve as sailors on board the Sea King, which ship from the whole of the evidence in the case, we infer to have been then a vessel intended by him to be used (after she should have been taken to the Azores) in the Confederate service. These facts raise questions similar to those which were involved in the cases of the seamen on board the Georgia and Rappahannock, except that none of these particular deponents accepted the Confederate service when the true object of the voyage was disclosed to them. These questions, upon the construction of the Act, are not free from difficulty; but in some of the other cases convictions have been obtained and submitted to; and we think that, even if there were no other point arising upon his acts when he handed over the ship to her Confederate Commander, it would be proper, upon this evidence,

* Appendix, vol. I, p. 487.

† *Ibid.*, p. 490.

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that Captain Corbett should be prosecuted for a violation of the 2nd section of the Act, by procuring, or attempting to procure, these men, and others unknown, to serve and be employed, &c., or to go and embark from Liverpool for the purpose or with intent to serve or to be employed, &c., contrary to that section.

" We further think, on more deliberate consideration, that if the Sea King ought to be deemed (as *prima facie* we think she may be) to have been still a British ship when Captain Corbett endeavoured to induce the men on board her to accept the Confederate service, the question whether her deck was not then 'a place belonging or subject to Her Majesty' is a serious one, which ought also to be raised by the indictment. In our former Report we stated that we did not think a British merchant-ship at sea was included within Her Majesty's 'dominions' in the sense of the Act; but in the 2nd clause there are also the other and larger words above noticed, to which we did not then advert, and which might, perhaps, receive a more extensive construction.

" We have, &c.
(Signed) " ROUNDELL PALMER.
" R. P. COLLIER.
" ROBERT PHILLIMORE."

Proceedings were accordingly directed to be taken against the master of the Sea King. He was arrested in January 1865, brought before a Magistrate, committed for trial, and in November of the same year tried before the Lord Chief Justice and a special jury, on the charge of having, either within the United Kingdom, or on the high seas, enlisted British subjects, or incited them to enlist, in the service of the Confederate States.

The evidence produced at the trial was very conflicting. Several witnesses who had sailed in the ship were examined for the defence. These witnesses contradicted on material points the evidence given in support of the prosecution, and the statements contained in the foregoing depositions, and stated on oath that Corbett took no part in the endeavours made to induce the men to enlist, and that the persuasion used was used solely by the Americans who presented themselves as Confederate officers. The Chief Justice put to the jury the question whether the defendant did, in fact, attempt to enlist the men or procure them to enlist, reserving any questions of law which might be raised on the part of the defence in case the answer should be in the affirmative. The jury returned a verdict of "not guilty."

The first mate of the Sea King, Charles Eastman, who was examined for the defence, gave evidence, in the course of his examination, as follows:—

" I was second mate of the Sea King when I sailed in her on her first voyage. I was first mate on her when she was sold to the Confederates. Mr. R. Wright was her owner. She was to go to Bombay and nothing was said as to her ultimate destination. She took in 850 tons of coals. It was an ordinary cargo, and coals at that time paid the best freight. She had forty-five hands the first voyage, and forty-seven the second."

The steward of the ship, John R. Brown, who was also examined for the defence, stated that, when she left London, there was nothing out of the usual course in her stores which might lead to the supposition that she had any other destination than the East Indies.

In cross-examination he said, " Steamers often take cargoes of coal to the East Indies. She had nearly as many coals on board as she could carry. It is not an unusual thing to send a power of sail with ships going on a long voyage."

With the view of obtaining further information respecting the Sea King, Mr. Hammond, on the 27th January, 1865, wrote to Messrs. Robertson and Co., of London, who had originally been part-owners and managing owners of the ship. Mr. Hammond's letter and the answer returned by Messrs. Robertson and Co. were respectively as follows:—*

Mr. Hammond to Messrs. Robertson and Co.

" Gentlemen,

" *Foreign Office, January 27, 1865.*

" I am directed by Earl Russell to state to you that his Lordship has been informed that the Shenandoah, a full-rigged ship of 1,100 tons and 250 horse-power, now stated to belong to the Government of the so-called Confederate States, was formerly in the possession of your firm, at which time she bore the name of the Sea King; and I am directed to inquire whether you have any objection to inform his Lordship of the circumstances under which you sold the vessel, and particularly whether she was sold to an agent of the so-called Confederate Government.

" I am, &c.
(Signed) " E. HAMMOND."

"Sir,

"We beg to acknowledge receipt of your letter of yesterday, and to inform you that the Sea King was sold by us to a British subject, a Mr. Wright, of Liverpool, through the agency of Messrs. Curry, Kellock, and Co. of Liverpool, brokers, in the usual way, and that the bill of sale, &c., passed through Her Majesty's Customs in due order.

"After the sale of the vessel we had nothing whatever to do with her, and she remained in dock for some weeks, and was entered out for Bombay, which port, we were informed, was to be her destination.

"We are not aware, nor have we any knowledge, that any Confederate agent had anything to do with the ship during her stay in this country.

"The Sea King was only 150 horse-power, and not, as stated in your letter, 250.

"We have, &c.

(Signed) "ROBERTSON AND CO."

On inquiry, it appeared that the Sea King was a screw-steamer built at Glasgow in the year 1863, with a view to employment in the China trade. She was originally owned in shares by several part owners, Messrs. Robertson and Co., of London, acting as managing owners. She sailed from London, in November 1863, for New Zealand and the China Seas, carrying troops for Her Majesty's Government to Auckland, whence she proceeded to Hankow, and returned to London with a cargo of tea. In September 1864 she was sold to a Mr. Richard Wright, a shipowner of Liverpool. Wright, on the 7th October, 1864, granted a certificate of sale to P. S. Corbett, the master of the ship, by which he was empowered to sell her at any port out of the United Kingdom for a price not less than 45,000*l.*, within six months after the date of the certificate. When originally fitted out by Robertson and Co., and when sold by them to Wright, she had on board two ordinary 12-pounder carronades, intended only for use as signal guns and for other uses common in merchant-vessels. These were the two 12-pounder guns hereinafter referred to. The crew of the Sea King signed Articles for a voyage from London to Bombay (calling at any ports or places on the passage) and any other ports or places in India, China, or Japan, or the Pacific, Atlantic or Indian Oceans, trading to and from as legal freights might offer, until the return of the ship to a final port of discharge in the United Kingdom or Continent of Europe, the voyage not to exceed two years.

From what has been stated above, it will have been seen that the Shenandoah was a steam-ship originally named the Sea King, which had been built, not for war but for commercial purposes; that she had been employed in the China trade, and was, at the time when she sailed from the port of London in October 1864, registered in the name of a Liverpool merchant; that she cleared and sailed as for a trading voyage; that her crew were hired and signed Articles for such a voyage, and that they shipped and went to sea without suspecting that she was intended for any other destination; that there was nothing in her cargo, stores or otherwise to excite suspicion; that before or at the time of her arrival in the vicinity of the Madeira Islands she was sold and transferred by her owner to the Government of the Confederate States; that she took on board, whilst at sea, her Commander and officers, all of whom were American citizens, with a small handful of them as a crew; that the officers and crew who had brought her out from London left her, with very few exceptions, and returned to England; that, in order to induce her original crew to take service in her, solicitations and inducements of every kind were employed by her Commander and officers, but without success; that, after being transferred as aforesaid, she was armed for war either on the high seas or in Portuguese waters, and that she thence commenced her cruise, under the name of the Shenandoah, given to her by her new owners.

It will have been seen, also, that no representation had been made to Her Majesty's Government respecting her by Mr. Adams, and that no information about her was ever conveyed to or came into the possession of the Government, previous to the Report received on the 12th November, 1864, from Her Majesty's Consul at Teneriffe.

Lastly, it will have been observed that, immediately on the receipt of that Report, the Government consulted its advisers on the question whether legal proceedings could be instituted against the master of the ship, who had sailed with her from London, for his share in the transaction, and that he was afterwards indicted and brought to trial, but was acquitted by the jury, the evidence as to his acts being doubtful and conflicting.

The steamer Laurel, which conveyed to the Madeira Islands the guns destined for the Shenandoah and her commander and officers, had on the 8th October, 1864, cleared from the port of Liverpool for Matamoras and Havana and Nassau, and her crew were shipped for that voyage. Her clearance stated that she had a crew of 40 men, no passengers, and

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sundry packages of British and foreign goods free of duty. She is believed to have been sold whilst abroad to the Government of the Confederate States.

Mr. Adams subsequently, on the 7th April, 1865, wrote to Earl Russell, inclosing and referring to a letter addressed to Mr. Seward by the Consul of the United States at Rio Janeiro, in which it was stated that several United States' ships had been captured and destroyed by the Shenandoah. In this Note Mr. Adams wrote as follows:—*

"I am by no means insensible to the efforts which have already been made, and are yet making, by Her Majesty's Government to put a stop to such outrages in this kingdom and its dependencies. Neither can I permit myself to doubt the favourable disposition of her Ministers to maintain amicable relations with the Government which I represent.

"Whilst perfectly ready to bear testimony to the promptness with which all the numerous remonstrances and representations which it has been my painful duty heretofore to submit, have been met and attended to by your Lordship, it is, at the same time, impossible for me to dispute the fact that the hostile policy which it is the object of all this labour to prevent has not only not been checked, but is even now going into execution with more and more complete success."

He proceeded to dwell upon the losses which the commerce and navigation of the United States had sustained, and the circumstances under which these losses had been inflicted, and to observe in effect that such injuries must tend to give rise to "the gravest of complications between any two nations placed under like circumstances." He added:—

"That in this case no such event has followed, has been owing, in the main, to a full conviction that Her Majesty's Government has never been animated by any aggressive disposition towards the United States; but, on the contrary, that it has steadily endeavoured to disconvene, and in a measure to check, the injurious and malevolent operations of many of her subjects. But whilst anxious to do full justice to the amicable intentions of Her Majesty's Ministers, and on that account to forbear from recourse to any but the most friendly and earnest appeals to reason and to their sense of justice for the rectification of these wrongs, it is impossible to resist the conviction that heretofore their measures, however well intended, have never proved effective to remedy the evil complained of. Prompt to acquit them of any design, I am reluctantly compelled to acknowledge the belief that, practically, this evil had its origin in the first step taken, which never can be regarded by my Government in any other light than as precipitate, of acknowledging persons as a belligerent Power on the ocean before they had a single vessel of their own to show floating upon it. The result of that proceeding has been that the Power in question, so far as it can be entitled to the name of a belligerent on the ocean at all, was actually created in consequence of the recognition, and not before; and all that it has subsequently attained of such a position has been through the labour of the subjects of the very country which gave it the shelter of that title in advance. Neither is the whole case stated even now. The results equally show that the ability to continue these operations with success during the whole term of four years that the war has continued, has been exclusively owing to the opportunity to make use of this granted right of a belligerent in the Courts and the ports and harbours of the very Power that furnished the elements of its existence in the outset."

Mr. Adams did not assert that in respect of the departure, equipment, or armament of the Shenandoah there had been any negligence or breach of international duty on the part of Her Majesty's Government; nor could he have done so with any show of reason. The substance of his complaint, as regarded the acts or omissions of the Government, was, that Great Britain had declared herself neutral in the war and had recognized the Confederate States as a belligerent, and that Confederate vessels had been suffered to enter and make use of the ports and harbours of Great Britain and her Colonies, equally with vessels of the United States.

On the 25th January, 1865, the Shenandoah arrived at Port Philip, in the Colony of Victoria, and anchored in Hobson's Bay; and her Commander immediately sent one of the officers of the ship to present the following letter to the Governor of the Colony:—†

Lieutenant Waddell to Governor Sir C. H. Darling.

"Confederate States' steamer of war Shenandoah,

"Port Philip, January 25, 1865.

"Sir, "I have the honour to announce to your Excellency the arrival of the Confederate States' steamer Shenandoah, under my command, in Port Philip this afternoon, and also to communicate that the steamer's machinery requires repairs, and that I am in want of coals.

"I desire your Excellency to grant permission that I may make the necessary repair and supply of coals to enable me to get to sea as quickly as possible.

"I desire also your Excellency's permission to land my prisoners. I shall observe the neutrality.

"I have, &c.

(Signed) "JAS. J. WADDELL."

* Appendix, vol. i, p. 501.

† Ibid., p. 500.

The Governor (Sir C. H. Darling) caused the bearer of the letter to be informed that it should be answered on the following day. The Governor had not, at this or any other time, any personal intercourse with the Commander of the Shenandoah.

Commander Waddell's application was, on the 26th January, brought by the Governor before the Executive Council of the Colony for consideration. The advice given by the Council to the Governor thereon is set forth in the subjoined extract from the Minutes of its proceedings:—*

"Despatches from the Right Honourable the Secretary of State, covering the Queen's Proclamation of Neutrality, and all instructions and orders which have, from time to time, been issued by command of Her Majesty, through the Secretary of State, to the Governors of Her Majesty's Colonies and Possessions, for their guidance during the continuance of hostilities on the North American Continent, as well as official correspondence and papers connected with the proceedings of the Confederate steamship Alabama at Her Majesty's Colony of the Cape of Good Hope, are laid before the Council, and read by the Clerk.

"After careful consideration of these instructions and papers, the Council advise that the Honourable the Commissioner of Trade and Customs, writing in the name of his Excellency the Governor, should acquit the Commander of the Shenandoah.—

"1. That the vessel under his command will not be allowed to quit the anchorage in Hobson's Bay within twenty-four hours after any vessel belonging to the Federal States shall have left the port, and further inform him that, in case he should infringe this rule, his Government will be held responsible by that of Great Britain for violating the neutrality of British waters.

"2. That the Commander of the Shenandoah be requested to communicate to the Government of Victoria the nature and extent of the repairs of which he states his vessel to be in need; and that he be informed that permission will be granted for the Shenandoah to remain in the waters of the Colony a sufficient time to receive the provisions or things necessary for the subsistence of her crew—but not beyond what may be necessary for immediate use—and to effect her repairs; and that when the Government of Victoria are in possession of the nature and extent of the supplies and repairs which are necessary, the Commander of the Shenandoah will then be informed of the time which his vessel will be permitted to remain in the waters of the Colony.

"3. That, in reply to that part of his letter which refers to prisoners, the Commander of the Shenandoah be requested to communicate to the Government of Victoria the names of the prisoners, and any other particulars relating to them which he may be willing to supply.

"His Excellency, concurring with the advice which has been tendered to him, directs the Honourable the Commissioner of Trade and Customs to address the Commander of the Shenandoah in the above recited terms.

"The Council further advise his Excellency to authorize a communication being made to the United States' Consul at Melbourne, informing him of the application which has been made by the Commander of the Shenandoah for permission to land prisoners, and stating that the Government are desirous of knowing whether the Consul will undertake to receive and provide for them."

In conformity with the advice of the Council, communications were addressed, by the Governor's direction, to the Commander of the Shenandoah and to the Consul of the United States at Melbourne, Mr. W. Blanchard.

The Consul replied that he had already made provision for the persons brought in as prisoners by the Shenandoah. He addressed several letters to the Governor, protesting against the admission of the vessel into the port of Melbourne, and calling on him to cause her to be seized, as guilty of piracy. The reasons on which the Consul relied were stated by him in the following letter:—†

Mr. Blanchard to Governor Sir C. Darling.

*"Consulate of the United States of America.
Melbourne, January 28, 1865.*

"Sir,

"I am in receipt of a communication from C. J. Tyler, Esq., your Excellency's Aide-de-camp, dated to-day, informing me that your Excellency has submitted my despatches of the 26th and 27th January instant to the consideration of your Legal Advisers, and that your Excellency's decision, when made, will be forwarded to me.

"Evidence being daily accumulating in this office in support of the reasons for the protests I had the honour to forward to your Excellency, I now beg leave to call your attention specially to the following:—

"1. That the Sea King *alias* Shenandoah, now in this port, and assuming to be a war-vessel, is a British-built ship, and cleared from a British port as a merchantman, legally entering no port until her arrival here, where she assumes to be a war-vessel of the so-called Confederate States, that any transfer of said vessel at sea is in violation of the Law of Nations, and does not change her nationality.

"2. That inasmuch as Her Majesty's Neutrality Proclamation prohibits her subjects from supplying or furnishing any war material or ship to either belligerent, this vessel, having an origin as above, is not entitled to the privileges accorded to the belligerents by said Proclamation.

* Appendix, vol. I, p. 511.

† Ibid., p. 592.

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"3. That being a British-built merchant-ship, she cannot be converted into a war-vessel upon the high seas of the so-called Confederate States, but only by proceeding to and sailing in such character from one of the ports of the so-called Confederacy.

"4. That it is an established law that vessels are to be considered as under the flag of the nation where built, until legally transferred to another flag.

"5. That said vessel sailed as an English merchant-ship from an English port, and cannot, until legally transferred, be considered as a man-of-war.

"6. That not being legally a man-of-war, she is but a lawless pirate, dishonouring the flag under which her status is to be established, and under which she decoys her victims.

"7. That her armament came also from Great Britain in English vessels (the Laurel and Sea King, now Shenandoah), both of which cleared under British seal, or, if without it, in violation of established law.

"8. That as such she has committed great depredations upon ships belonging to citizens of the United States, making her liable to seizure and detention, and the crew guilty of piracy.

"I cannot close this without further protesting in behalf of my Government against the aid and comfort and refuge now being extended to the so-called Confederate cruiser Shenandoah in this port.

"I have, &c.
(Signed) "W.M. BLANCHARD."

The propositions asserted by the Consul, that the Shenandoah, having been built as a merchant-ship in Great Britain, and having sailed as such from a British port, could not subsequently acquire the character of a belligerent ship of war, unless she had in the interval proceeded to, and sailed from, a port of the Confederate States, and that she was in the view of international law a pirate, were erroneous.

In answer to the Consul's letter above set forth, the following letter was addressed to him by order of the Governor:—*

Mr. Tyler to Mr. Blanchard.

"Sir,

"Private Secretary's Office, Melbourne, January 30, 1865.

"I am directed by his Excellency the Governor to acknowledge the receipt of your letter of the 28th instant, and to acquaint you that, having fully considered the representations contained in that communication and in your previous letters of the 26th and 27th instant, and advised with the Crown Law Officers thereon, his Excellency has come to the decision that, whatever may be the previous history of the Shenandoah, the Government of this Colony is bound to treat her as a ship of war belonging to a belligerent Power.

"I have, &c.
(For Private Secretary),
(Signed) "C. J. TYLER."

The subjoined extracts from Minutes of the proceedings of the Executive Council of the Colony show what subsequently occurred in relation to the Shenandoah and the course pursued with reference to her by the Government of the Colony:—†

Extract from the Minutes of the Council.—Minute 657 of the Proceedings on the 30th of January, 1865.

"At the close of the ordinary business of the Council, the Honourable the Commissioner of Trade and Customs submits to his Excellency a communication from the commander of the Shenandoah, dated 28th January, 1865—in reply to the letter which was addressed to him on the 26th instant—in which Lieutenant Waddell states that he has not been able up to the present time to inform the Government of the extent of the repairs which are required to be made to his vessel, and expressing his fear that the damages will prove to be more serious than he had anticipated; but that as soon as a diver, whom he has employed for the purpose, has been able to inspect the screw-shaft below water, he will lose no time in communicating with them. This letter was, shortly afterwards, followed by another from Messrs. Langlands, Brothers, and Co., of the Port Philip Foundry, and dated the 30th January, addressed to Lieutenant Waddell, which that officer endorsed, as forwarded to the Honourable the Commissioner of Trade and Customs, for the information of the Governor, and with a request that it might be returned.

"In this letter Messrs. Langlands report that it was absolutely necessary to put the vessel on the Government slip, as, after inspection by the diver, he reports the lining of the outer stern-tube to be entirely gone, and requires to be replaced, and that, as three days more will elapse before the vessel can be slipped, Messrs. Langlands state they will not be able to accomplish the repairs within ten days from the date of their letter.

"After considering these letters, the Council advise his Excellency to authorize another communication to be addressed to the Commander of the Shenandoah, drawing his attention to the circumstance that he had not as yet replied to the request for information as to the nature of the supplies of

* Appendix, vol. i, p. 553.

† Ibid., p. 514.

which he states he is in need for the subsistence of his crew, nor had he furnished the list of the prisoners on board; and that he be further informed that the Governor had appointed a Board of practised men to examine the Shenandoah, and report whether that vessel is in a fit state to proceed to sea, or whether any, or if any, what repairs are necessary. For this purpose his Excellency appoints Mr. C. B. Payne, Secretary Naval Survey Board; Mr. Douglas Elder, Superintendent Marine Yard; and Mr. Alexander Wilson, Government Engineer, to be a Board to proceed on board the Shenandoah, and report accordingly.

" His Excellency then lays before the Council three letters which have been addressed to him by the United States' Consul at Melbourne, dated respectively the 26th, 27th, and 28th of January, 1865, protesting against the rights of a belligerent being granted to the Shenandoah, and further protesting against the aid and comfort and refuge now being extended to that vessel.

" Having referred these letters to his legal advisers, his Excellency received from them the following opinion:—

" We have the honour to acknowledge the receipt of three letters addressed to his Excellency the Governor by the Consul of the United States of America, dated respectively the 26th, 27th, and 28th instant.

" We are of opinion that there is no evidence of any act of piracy committed by any person on board the vessel called the Shenandoah. This vessel purports to be, and we think she should be treated as, a ship of war belonging to a belligerent Power."

(Signed)

" ARCHD. MICHAEL,

" GEO. HIGGINBOTHAM,

" Crown Law Officers.

" January 30, 1865."

" His Excellency states that he had replied to the United States' Consul to the effect that, having given an attentive consideration to his letters, and having consulted with the Law Officers of the Crown, he had come to the decision that the Government of this Colony were bound to treat the Shenandoah as a ship of war belonging to a belligerent Power.

" His Excellency then consults the Council on the only point upon which he thought any doubt could arise, viz., whether it would be expedient to call upon the Lieutenant commanding the Shenandoah to show his commission from the Government of the Confederate States, authorizing him to take command of that vessel for warlike purposes.

" After brief consultation a majority of his advisers tender their opinion that it would not be expedient to do so."

*Extract from the Minutes of the Council.—Minute 65/8 of the Proceedings on the 6th February, 1865.**

" On concluding the ordinary business of the day his Excellency informs the Council that since their last meeting a communication had been received from the Commander of the Shenandoah, dated 30th January, stating that the immediate supplies required for the officers and crew under his command, consisted of fresh meat, vegetables, and bread daily, and certain sea supplies which are enumerated; and that with respect to the list of prisoners, all the persons—whom on the high seas he considered to be his prisoners—had left his ship in shore boats without his knowledge soon after his arrival in the port. The Honourable Commissioner of Trade and Customs had been authorized to reply to Lieutenant Waddell, that permission was granted to him to ship, in reasonable quantities, the provisions and supplies which he had enumerated, and that it was necessary for him to place his Paymaster in communication with the Collector of Customs, as to the quantities and particulars in detail. The request formerly made to Lieutenant Waddell, to furnish the numbers and particulars of his prisoners, was also renewed in this communication, and he was informed that, although the number in this instance was understood to be small, yet this case might form a precedent for future guidance in any other case where it might be desired to land a larger number of prisoners, in violation of municipal or other laws or regulations in force in this colony.

" To this letter Lieutenant Waddell replied on the 1st February, that the number of the prisoners he had brought into the port were eleven, two being females; that they were captured serving in the American sloop *Delphine*, which vessel he destroyed; and on arrival in this port they left the Shenandoah of their own free will—without consulting the regulations enforced in this colony—unmolested, unassisted, and not in any boat belonging to the ship. He further added that he was extremely anxious to get the Shenandoah to sea.

" The Report of the Board of Survey, on the repairs required by the Shenandoah, is then laid before the Council and read.

" On receiving this Report, his Excellency states that he had directed another letter to be addressed to Lieutenant Waddell, informing him that, as it was evidently necessary from the Report that his vessel should be placed on the slip, it was presumed that he would proceed promptly with the necessary arrangements; and it was further pointed out to him that the slip—which Messrs. Langlands, in their communication, had termed the Government Slip—was not in the possession or under the control of the Government; that it was originally built by the Government, but had for many years been leased to various parties, and therefore Lieutenant Waddell's arrangements must be made with the present lessors.

" The Commissioner of Trade and Customs then acquainted his Excellency that he had issued instructions to the principal officers in Hobson's Bay to furnish daily reports of the Shenandoah, in

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obedience to a Minute of his Excellency of the 3rd instant; and that he had enjoined upon these officers the necessity of performing this service without unseemly obstruction or interference; but that any apparent abuse of the permission to make repairs or to take in supplies was to be reported; and their attention was especially directed to the concluding paragraph of the Minute, relating to any extension of the armament of the Shenandoah, or to any attempt to render her present armament more effective.

Mr. Francis further states, that an application had been made this day to the Collector of Customs for permission to land certain surplus stores, accompanied by a declaration that none of these stores had been captured, but that they all came into the possession of Lieutenant Waddell with the vessel. On consultation with the Council, his Excellency directs this application to be referred for the opinion of the Crown Law Officers, whether such a permission should be granted, and whether the 44th section of the Act 21 Vict., No. 13, is applicable to the case.

His Excellency then directs Mr. Francis to address another letter to Lieutenant Waddell, and inform him that, as his vessel has been twelve days in the port already, with permission to lay in provisions and to effect necessary repairs, it is now desired that he should name the day upon which he will be prepared to proceed to sea; and that, after carefully considering the position of Great Britain as strictly neutral in the present contest on the North American Continent, the Government of Victoria cannot grant him the use of any appliances which are the property of the Government, nor can it render any assistance, either directly or indirectly, towards effecting the repairs of his vessel."

The Report of the Board of Survey referred to in the foregoing Minute was as follows:—*

Report of Survey held on board the Confederate Screw-Steamer Shenandoah.

"Melbourne, February 1, 1865.

We, the Undersigned, in pursuance of instructions received from his Excellency the Governor, proceeded on board the Confederate screw-steamer Shenandoah this morning at 10 a.m. for the purpose of examining her, with the view of reporting whether that vessel is now in a fit state to proceed to sea, or whether and what repairs are necessary, have the honour to report—

"1st. That the Shenandoah is not in a fit state to proceed to sea as a steam-ship.

"2nd. That repairs are necessary.

"3rd. That the part or parts requiring repair being the inner stern-post bearing of the screw-shaft, the extent of damage cannot be ascertained without the vessel being slipped.

(Signed) "CHARLES R. PAYNE.

"ALEX. WILSON, *Engineer-Surveyor.*

"DOUGLAS ELDER, *Superintendent of Marine Yard.*"

The Governor's Minute (or Memorandum) of the 3rd February, referred to in the foregoing Minute of Proceedings, was as follows:—†

Memorandum for the Commissioner of Trade and Customs.

"I have to request the Honourable the Commissioner of Trade and Customs will be so good as to make arrangements for obtaining daily reports of the progress of the repairs and provisioning of the Shenandoah, and communicate the information obtained to me.

"I am sure that the Honourable Commissioner will take every precaution in his power against the possibility of the Commander of that vessel in any degree extending its armament, or rendering the present armament more effective.

"C. H. D.

"Toorak, February 3, 1865."

On the 10th February, 1865, the Consul wrote to the Governor,† inclosing a deposition on oath by one John Williams, who had been a prisoner on board the Shenandoah, and had escaped from her by swimming ashore on the 6th February. In this deposition the said John Williams stated that fifteen or twenty men had joined the ship since her arrival in port, and were concealed in various parts of her, and that three others, who were wearing the ship's uniform, had also come aboard since her arrival.

The course pursued by the Colonial Government with reference to this and other matters relating to the Shenandoah is stated in the subjoined further extract from the Minutes of the Executive Council:—§

Extract from the Minutes of the Council.—Minute 65/9 of the Proceedings on the 13th February, 1865. †

"His Excellency states that Lieutenant Waddell had replied to the communication, which it had been agreed to address him at their last meeting, that he could not name a day for proceeding to sea,

* Appendix, vol. i, p. 518.

† Ibid., p. 529.

‡ Ibid. p. 606.

§ Ibid., p. 520.

until his ship is taken on the slip, when the amount of the repairs which may be necessary could be ascertained, and the time estimated in which they could be effected. He further states that the recent gales had prevented him from lightening the ship to the necessary draught, preparatory to placing her on the slip, but that he hoped to do so on the following morning.

" The opinion of the Attorney-General on the application which has been made for permission to land certain surplus stores from the Shenandoah is also laid before the Council.

" It is to the effect that the permission cannot be granted by the Government of Victoria, consistently with a strict observance of the rules prescribed for the maintenance of neutrality; and his Excellency informs the Council that he has authorized a communication to the Commander of the Shenandoah to that effect.

" The further Report of the Board of Survey on the Shenandoah, after viewing that vessel on the slip, is also submitted and considered.

" His Excellency then states to the Council that, in consequence of a letter which he had received from the United States' Consul, dated the 10th instant and inclosing a testimony on oath of one John Williams, he had deemed it his duty to refer it for the consideration of the Law Officers of the Crown; as, presuming the statements therein contained to be correct, it would appear that the Commander of the Shenandoah was taking advantage of the aid and comfort which had been afforded to him in this port, to increase the number of his crew by enlisting British subjects, in contravention of the Foreign Enlistment Act.

" In consequence of this reference the Law Officers of the Crown had directed the attendance of the man John Williams, and that he had, with other men, attended that morning at the Crown Law Offices, and had made statements to the effect that a number of men representing themselves to be Englishmen had gone on board the Shenandoah since her arrival in this port, with the intention of joining her, and were now concealed on board.

" The Law Officers being of opinion that there was sufficient evidence to take steps for prosecuting, had instructed the police to lay informations against these men for a misdemeanour, and to apply for a warrant for their apprehension.

" On consultation with the Council, it was not considered necessary by his Excellency to take any further steps in the matter until the result of the police-office proceedings were known; but Mr. Francis is instructed again to inquire, by letter, when Lieutenant Waddell would be ready to proceed to sea.

" A Report from the detective police at Sandridge, of this day's date, on matters relating to the Shenandoah, is laid upon the table of the Council; and as, from information which had reached the Government, some suspicion had been attached to the movements of a vessel called the Eli Whitney, now lying in the bay, the Honourable the Commissioner of Trades and Customs undertakes that her movements shall be carefully watched.

" The Honourable the Attorney-General then submits to his Excellency depositions taken on oath by eleven persons before the Consul of the United States in Melbourne, which depositions have been placed in his hands by the Consul.

" A true extract.

(Signed) " J. H. KAY, Clerk of the Council."

The opinion of the Attorney-General of the Colony, referred to in the foregoing Minute, was as follows:—*

" Section 44 of Act No. 13 is not applicable, in my opinion, to this case. Even if the Shenandoah be regarded as a ship having commission from a foreign State within the meaning of the section, the section does not authorize the master of such a ship to land goods without submitting to the rules of the Customs, but imposes a penalty on him for not delivering an account, in writing, of the quality and quantity of goods, &c., on board. The account is not stated to have been delivered, and if it had been, the master is not empowered to land the goods, although the Customs officers have the right to do so, subject to the regulations in force respecting Her Majesty's ships.

" I am not aware that there is anything in the Customs Act that would make the relaxation of the Customs regulations now asked for absolutely illegal. But I am of opinion that the permission that is sought cannot be granted consistently with a strict observance of the rules prescribed for the maintenance of neutrality.

(Signed) " GEO. HIGINBOTHAM.

" Crown Law Office, February 6, 1865."

The further Report of the Board of Survey, also referred to in the foregoing Minute, was as follows:—†

Further Report on the Confederate steam-ship Shenandoah.

" The Shenandoah having been hauled up on the patent slip at Williamstown, we, the Undersigned, proceeded to hold a survey on the damage sustained to the forward bearing of the outer length of the screw-shaft, and find as follows, viz.:—

" 1st. The lignum vitae staves, forming the bearing for the forward end of the outer length of the screw-shaft, are entirely displaced.

" 2nd. That the inner stern-post bracket, in which the staves of lignum vitae are fitted, forming

* Appendix, vol. i, p. 521.

† Ibid., p. 522.

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also the support for the foremost end of the screw-frame, is fractured on the starboard side to the extent of about four inches.

"3rd. That these repairs (necessary to render the steam-ship seaworthy) can be effected in or about five clear working days from this date.

(Signed)

"CHARLES B. PAYNE, *Late Lieutenant, R.N.*"ALEX. WILSON, *Engineer Surveyor.*"DOUGLAS ELDER, *Superintendent, Marine Yard.*

"Williamsburgh, February 10, 1865."

On the same 13th of February a warrant was granted by a magistrate at Williams-town for the apprehension of a man known as James Davidson, or "Charley," who was stated to be concealed on board the Shenandoah. The Superintendent of Police, who was charged with the execution of the warrant, went on board the ship, but was not permitted to search her, and was unable to apprehend the man of whom he was in quest. The Superintendent reported as follows to the Chief Commissioner of Police:—*

Superintendent Lyttleton to the Chief Commissioner of Police, Melbourne.

"Police Department, Superintendent's Office,

"Melbourne, February 14, 1865.

"Sir,

"I have the honour to inform you that, acting on your instructions, I proceeded last evening to the Confederate war-steamer Shenandoah, with a warrant for the arrest of a man known as Charley, stated to have illegally engaged himself on board the vessel. I asked for Captain Waddell, but was informed that he was not on board. I then asked for the officer in charge, saw him, and obtained permission to go on board. I told the officer my business, and requested that he would allow me to see the men on board, in order that I might execute my warrant. He refused to allow me. He then shewed me the ship's articles, and asked me to point out the name of the man, which I was unable to do. I showed him my warrant, which he looked over, and returning it to me he said, That is all right, but you shall not go over the ship. He told me I had better return when the captain was on board; but as he could not say at what hour he would probably return, I told him that I would see the captain the following day.

"This morning I went again to the Shenandoah, and, after stating my business, was allowed on board. I told Captain Waddell that I was informed he had persons on board who had joined his vessel here, and that, informations having been sworn to that effect, I had a warrant with me. He said, I pledge you my word of honour as an officer and a gentleman that I have not any one on board, nor have I engaged any one, nor will I while I am here. I said I understood that the persons I wanted were wearing the uniform of the Confederate States, and were working on board. This he distinctly denied. He offered to show me the ship's articles, but I declined, and told him that I had seen them last evening. I then asked him to allow me to go over the ship, and see if the men I wanted were on board. This he refused to do. I said I must try to execute my warrant, even if I had to use force. He said he would use force to resist me, and that, if he was overcome, he would throw up his ship to the Government here, and go home and report the matter to his Government. He said that he dare not allow me to search his ship; 'it was more than his commission was worth; and that such a thing would not be attempted by the Government to a ship of war of any other country.' He said 'it was only by courtesy that I was allowed on board,' and that he considered 'a great slight had been put upon him by sending me to the ship with a warrant.' He said he thought that his 'word should have been taken in preference to that of men who had probably deserted from the ship, and had been put up to annoy him by the American Consul.' He said that if I took one man I might come afterwards and take fifteen or twenty, and that the American Consul would perhaps lay an information against him as being a 'buccaneer or pirate.' He said he thought that he had been 'very badly treated here by the police refusing to assist him in arresting his deserters.' Before leaving, I asked him again if he refused to allow me to look for the man for whom I had a warrant in my hand. He replied yes, that he did refuse, and that he would 'fight his ship rather than allow it.' I then left.

"I am, &c.

(Signed) "THOMAS LITTLETON, *Superintendent.*"

This Report was on the same 14th February laid by the Governor before the Executive Council for consideration, as appears by the subjoined further extract from the Minutes of the Council:—*

Extract from the Minutes of the Council.—Minute 65/10 of the Proceedings on the 14th February, 1865.

"The Council are specially summoned to consider a Report from Police Superintendent Lyttleton, to whom had been entrusted the warrant mentioned in yesterday's proceedings, for the arrest of a British subject known as 'Charley,' who was stated on oath to have illegally enlisted himself on board the Confederate ship Shenandoah.

"The Report is read to the Council.

" His Excellency then draws the attention of his advisers to the gravity of the present state of affairs, as respects the Confederate steam-ship *Shenandoah*; and points out that as the ordinary course of the law has been frustrated by William Waddell refusing to allow the execution of a warrant issued upon a sworn information, it becomes necessary to consider what steps should now be taken to enforce the maintenance of neutrality.

" After full consideration of the instructions issued by Her Majesty's Government for the observance of neutrality, and some discussion upon the question of the right of the Government to enforce the execution of the warrant, the Council advise his Excellency to direct the Honourable the Commissioner of Trade and Customs to write to Lieutenant Waddell, and request that officer to reconsider his expressed determination to resist by force the execution of the warrant; and further, to inform him that, pending his reply, the permission which has been granted to him to repair and take in supplies has been suspended by the Governor.

" His Excellency then issues a direction under his own hand that, upon the receipt of an instruction to that effect from the Chief Commissioner of Police, none of Her Majesty's subjects in this Colony are to render any aid or assistance to, or perform any work in respect to the so-called Confederate steam-ship *Shenandoah*, or in launching the same.

" His Excellency further directs that the Chief Commissioner of Police be instructed to send some police to Williamstown, to take care that the direction above mentioned is duly observed by Her Majesty's subjects; and that the officer in charge of this force be strictly enjoined to prevent any collision between the police and the officers and men of the *Shenandoah*; and that no obstruction in any manner whatever is to be offered to their movements."

In pursuance of the advice of the Council, the following letter was on the same 14th February, 1865, addressed to the Commander of the *Shenandoah* by the Governor's direction:—*

" Sir,

" I am directed by his Excellency the Governor to state that it has been reported to the Government that you have refused to allow the execution on board the *Shenandoah* of a warrant issued upon the sworn information according to law, alleging that a British subject is on board that vessel, who has entered the service of the Confederate States in violation of the British statute known as the Foreign Enlistment Act; that it is not consistent with the British law to accept any contrary declaration of facts, whatever respect be due to the person, from which it proceeds as sufficient to justify the non-execution of such warrant; and that, moreover, it is conceived that this Government has a right to expect that those who are receiving in our port the aid and assistance which they claim as a belligerent under the Queen's Proclamation should not in any way oppose proceedings intended to enforce the maintenance of neutrality.

" It will be apparent to you that the execution of the warrant is necessary, in order to enable the Government to bring to justice those upon whose depositions the warrant was issued, if the statements in those depositions should prove false in fact.

" In this view you are appealed to, to reconsider your determination, and pending further information from you, which you are requested to make with as little delay as possible, the permission granted to you to repair and take in supplies is suspended, and Her Majesty's subjects have been duly warned accordingly.

" I have, &c.
(Signed) J. G. FRANCIS.

" J. J. Waddell, Esq.,

" Lieutenant Commanding Confederate States' steamer *Shenandoah*."

To this letter the following reply was received:—†

" Sir,

" Confederate States' steamer *Shenandoah*, February 14, 1865.

" I am in the receipt of your letter of this date, in which you inform me that you have been directed by his Excellency the Governor to state that it has been reported to the Government that I have refused to allow the execution on board the *Shenandoah* of a warrant issued upon sworn information, according to law, alleging that a British subject is on board this vessel who has entered the service of the Confederate States, in violation of the British statute known as the Foreign Enlistment Act; and that it is not consistent with the British law to accept any contrary relation of facts, whatever respect be due to the person from whom it proceeds, as sufficient to justify the non-execution of such warrant. I am then appealed to to reconsider my determination, and the letter concludes by informing me that, pending a further intimation from me, the permission granted to repair and take supplies is suspended.

" I have to inform his Excellency the Governor that the execution of the warrant was not refused, as no such person as the one therein specified was on board, but, permission to search the ship was refused. According to all the laws of nations, the deck of a vessel of war is considered to represent the majesty of the country whose flag she flies, and she is free from all executions, except for crimes actually committed on shore, when a demand must be made for the delivery of such person, and the execution of the warrant performed by the police of the ship. Our shipping articles have been shown to the Superintendent of Police. All strangers have been sent out of the ship, and two commissioned officers were ordered to search if any such have been left on board. They have reported to me that,

* Appendix, vol. i, p. 643.

† Ibid., p. 644.

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after making a thorough search, they can find no person on board except those who entered this port as part of the complement of men.

"I, therefore, as commander of the ship, representing my Government in British waters, have to inform his Excellency that there are no persons on board this ship except those whose names are on my shipping articles, and that no one has been enlisted in the service of the Confederate States since my arrival in this port, nor have I in any way violated the neutrality of the port.

"And I, in the name of the Government of the Confederate States of America, hereby enter my solemn protest against any obstruction which may cause the detention of this ship in this port.

"I have, &c.

(Signed) "JAS. J. WADDELL,
Lieutenant Commanding, Confederate States' Navy.

* To the Hon. Jas. G. Francis,
"Commissioner of Trade and Customs, Melbourne."

Late in the evening of the same day (14th February) four men, who had been on board the Shenandoah, were apprehended by the police under the circumstances stated in the subjoined Report:—

*Superintendent Lyttleton to the Chief Commissioner of Police, Melbourne.**

"I have the honour to inform you that, acting on your instructions, I proceeded yesterday, at 4 P.M., to Williamstown, and took possession of the slip on which the Confederate vessel Shenandoah is placed. I cleared the yard, and would not allow any workmen to go on board the ship. At about 10 o'clock P.M., four men left the Shenandoah in a boat, pulled by two watermen. They were followed by the Water Police, who were unable to come up with them until they got to the railway station. They were then requested to come back and see me. I questioned them, and they told me that they had been on board a few days unknown to the Captain; and that as soon as he found they were on board, he ordered them to go on shore. I have detained these men in custody, and have written to the American Consul, requesting him to forward some one who may be able to identify them. The tug-steamer came at 4 A.M. this morning to tow the Shenandoah off. I ordered them off, and requested Captain Ferguson not to supply the ship with a pilot. I am still in charge of the slip.

"I have, &c.

(Signed) "J. LYTTLETON."

The four persons so apprehended were on the 16th February taken before a Magistrate, and charged with having violated the Foreign Enlistment Act by enlisting, or attempting to enlist, in the Confederate service. One was discharged, being an American; the three others—one of whom was identified as being the man known as James Davidson or Charley—were committed for trial.

On the 15th February, the lessee of the slip on which the Shenandoah was being repaired wrote to the Chief Secretary of the Colony, stating that his manager had informed him that, should a gale of wind arise, he (the manager) would either be compelled to launch the ship, or run a great risk of her sustaining serious damage in consequence of her unsafe position on the cradle.†

This communication was laid before the Executive Council; and the Governor, by the advice of the Council, determined that the order by which the permission to repair had been suspended should be revoked, and the vessel allowed to complete her necessary repairs, her Commander being at the same time told, that he was expected to use every dispatch in getting to sea by the time previously fixed.‡

A communication to this effect was accordingly made to Commander Waddell, who, in acknowledging it, reiterated his previous denials in the following terms:—§

"The four men alluded to in your communication are no part of this vessel's complement of men; they were detected on board by the ship's police after all strangers were reported out of the vessel, and they were ordered and seen out of the vessel by the ship's police immediately on their discovery, which was after my letter had been dispatched informing his Excellency the Governor that there were no such persons on board. These men were here without my knowledge, and I have no doubt can be properly called stowaways, and such they would have remained but for the vigilance of the ship's police, inasmuch as they were detected after the third search, but in no way can I be accused, in truth, of being cognizant of an evasion of the Foreign Enlistment Act."

The Shenandoah quitted Port Philip on the morning of the 18th February, 1865.

On the 18th February,|| after the ship had sailed, the Consul of the United States sent to the Governor a declaration on oath purporting to be made by a man named Forbes.

* Appendix, vol. i, p. 527.

† Ibid., p. 528.

‡ Ibid., p. 646.

† Ibid., p. 528.

‡ Ibid., p. 526.

|| Ibid., p. 516.

The declaration was to the effect that, about 4 p.m. on the 17th February, Forbes had seen on the pier at Sandridge five men (most, if not all, of whom were stated by him to be British subjects) and that one of these told him that they and others were going on board a barque called the Maria Ross, then lying in the Bay, and were to join the Shenandoah when she was out at sea, and that boats from the Maria Ross were to come for them at 5 o'clock. The Consul stated that Forbes had come to his (the Consul's) office, with this intelligence at about 5 p.m., and had been taken by him immediately to the office of the Crown Solicitor, with the view of laying an information; but that the Crown Solicitor had refused to take the information, whereby an endeavour to prevent a violation of the neutrality of the port had been defeated. The Consul inclosed also a statement by a Mr. Lord, who had accompanied him to the Crown Solicitor. This statement, after giving an account of the interview, proceeded as follows:—*

" We left and went first to the office of the Chief Commissioner of Police, and not finding either him or Mr. Lyttleton in, we drove to the Houses of Parliament, and on sending your name to the Attorney-General he at once came out and asked us into the side room; he patiently listened to all you had to say, and then suggested that, if you would place the matter in the shape of an affidavit, he would lay it before his colleagues; that a verbal statement was not sufficient for the Government to proceed upon. We then left and drove to the office of the detective police, and saw Mr. Nicholson, the Chief, who heard the man's statement in full, but as he could not act without a warrant, advised us to go to the Police Magistrate, Mr. Sturt, and get a warrant; then he would at once act upon it. Leaving there, we went to the residence of Mr. Sturt, in Spencer Street, who received you very politely, listened to what you had to say, examined the man, but stated that he could not take the responsibility of granting a warrant on the evidence of this man alone, and advised your going to Williamstown to Mr. Call, who, perhaps, would be in possession of corroborative testimony through the water police. We then left, it being about half-past 7, and you, finding such a disinclination in any one to act in the matter, decided to take the deposition yourself and send it to the Attorney-General, leaving it to the Government to take such action on it as it might deem proper. Going to your Consulate the deposition was taken, and a copy inclosed to the Attorney-General, with a request for me to deliver it.

" I took it to the Houses of Parliament, which I found closed, and it being then late, about 9, I decided it was too late to stop the shipment of the men, as we understood the vessel was to leave at 5, and I went home and returned the letter to you on Saturday morning. Previous to going home, however, I again went to the detective office, saw Mr. Nicholson, told him how you had been prevented from getting the evidence before the Government in the shape they required it. He expressed his regret but could not act in so important a matter without a warrant."

The Consul complained that the language and manner of the Crown Solicitor, in refusing to take the information, had been insulting to him.

The Consul's letter was answered as follows:—*

Mr. Warde to Mr. Blanchard.

" Sir, " I am desired by his Excellency the Governor to acquaint you that he received your letter of the 18th instant in the afternoon of that day, Saturday, and that on Monday, the 20th, he caused it to be referred, through the Honourable the Attorney-General, to the Crown Solicitor for any explanation he might wish to offer.

" 2. After stating that it was only in consequence of his accidentally returning to his office at half-past 5 p.m., after it had been closed for the day, that the interview between you and himself occurred at all, Mr. Gurner states that he informed you that, not being a magistrate, he could not take an information, and adds that he was in a hurry to save a railway train, and therefore left more suddenly than he otherwise should have done; but he positively asserts that neither in manner nor language did he insult you.

" 3. His Excellency feels sure that the Crown Solicitor's tone and manner have been misapprehended, and confidently assures you that there was no intention on the part of that officer to fail in the respect due to your position as the Consul of the United States of America.

" I have, &c.

(Signed) " N. L. WARDE, *Private Secretary.*"

From circumstances which were discovered after the sailing of the Shenandoah, there was reason to believe that a number of men had gone secretly on board of that vessel during the night of the 17th February, and that they went to sea in her and became part of her crew.

The Governor reported this fact to Her Majesty's Government, and at the same time sent to the Governors of the other Australian Colonies, and to the Governor of New Zealand, letters in the following terms:—†

* Appendix, vol. i. p. 618.

† Ibid., p. 565.

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Governor Sir C. Darling to Governors of Australian Colonies and New Zealand.

"Sir,

"I consider it my duty to place your Excellency in possession of the accompanying correspondence and other documents connected with the proceedings of the Commander of the Confederate States' vessel Shenandoah, while lying in Hobson's Bay, for the purpose of having necessary repairs effected and taking in supplies, under permission granted by me in accordance with the conditions prescribed by Her Majesty's Proclamation and instructions for the observance of neutrality.

"2. I have also the honour to forward copies of letters from the Chief Commissioner of Police in Victoria, accompanied by reports and statements which leave no doubt that the neutrality has been flagrantly violated by the Commander of the Shenandoah, who, after having assured me of his intention to respect it, and pleaded the privilege of a belligerent ship of war to prevent the execution of warrants under the Foreign Enlistment Act, nevertheless received on board his vessel, before he left the port on the 18th instant, a considerable number of men destined to augment the ship's company.

"3. I have thought it right to communicate to your Excellency this information, in the event of Lieutenant Waddell or any of his officers hereafter claiming the privileges of a belligerent in any port of the Colony under your Government.

"I have, &c.
(Signed) "C. H. DARLING."

The three persons who had been committed for trial on the charge of having taken service or agreed to enlist on board the Shenandoah were brought to trial on the 17th March, 1865, at the Criminal Sessions of the Supreme Court of the Colony of Victoria. One was found guilty by the jury, and another pleaded guilty, and these two were sentenced to ten days' imprisonment.*

The Judge, in pronouncing sentence, took notice that the men had already been imprisoned for more than a month, and that persons in their condition of life might not and probably did not know the important results which might follow from such an unlawful act as they had committed. It was right and necessary, however, that the law should be vindicated. The third of the accused persons (a boy of about 15 years of age) was discharged in consideration of his youth, on the application of the Attorney-General.

It may be here mentioned that in March 1864, six men had been brought to trial at Cork on a charge of having agreed to enlist on board the United States' war-steamer Kearsarge. They pleaded guilty, and were discharged without punishment, on the ground that they were probably unacquainted with the law, and ignorant of the criminality of the act which they had committed. It was stated, and is believed by Her Majesty's Government to be true, that they had come on board without the sanction or knowledge of the Captain of the Kearsarge, who ordered them to be put ashore when he subsequently touched at Queenstown.

The Governor of Victoria, in reporting to Her Majesty's Government the circumstances which had occurred during the time that the Shenandoah remained within the waters of that Colony, requested that he might be furnished with specific instructions as to the right of the Colonial Government to execute a warrant under the Foreign Enlistment Act on board a belligerent ship of war, whether belonging to a State with which Her Majesty had diplomatic relations, or to a community situate as the Confederate States were; and, if the right should be considered to exist, he requested to be informed to what extent the Government would be justified in proceeding for the purpose of enforcing the execution of such a warrant. The Governor's inquiry was referred to the Law Officers of the Crown in England, and they advised as follows:—†

The Law Officers of the Crown to Earl Russell.

"My Lord,

"We are honoured with your Lordship's commands signified in Mr. Murry's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing copies of despatches from Governor Sir C. Darling, together with their several inclosures, relative to the visit to the port of Melbourne of the Confederate States' steamer Shenandoah, and the alleged enlistment of British subjects there to serve on board that vessel; and to request that we would take these papers into our consideration, and favour your Lordship with any observations we might have to offer thereupon, and more particularly as to whether they seem to require any action on the part of Her Majesty's Government.

"In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

"That it appears to us that, in the circumstances stated, his Excellency the Governor acted with

propriety and discretion; and there does not appear to us at present to be a necessity for any action on the part of Her Majesty's Government.

"With respect to his Excellency's request, that he may receive instructions as to the propriety of executing any warrant under the Foreign Enlistment Act on board a Confederate (public) ship of war, we are of opinion that, in a case of strong suspicion, he ought to request the permission of the Commander of the ship to execute the warrant; and that, if this request be refused, he ought not to attempt to enforce the execution; but that, in this case, the Commander should be desired to leave the port as speedily as possible, and should be informed that he will not be re-admitted into it.

"We have, &c.

(Signed) "ROUNDELL PALMER.
"R. P. COLLIER.
"ROBERT PHILLINORE."

Whilst the Shenandoah was in Hobson's Bay the following report on her construction, equipment, and warlike force, was made to the Governor by a competent officer who had served as a lieutenant in Her Majesty's Navy:—*

Captain Payne to Colonel Henderson.

* Sir,

"Melbourne, February 10, 1865.

"With reference to your Memorandum, marked Confidential, directing me to report upon the armament, speed, and other qualities of the Confederate war-steamer Shenandoah, I have the honour to inform you that I have taken every opportunity that presented itself for obtaining the information you desire, and beg now to report,—

"1st. That the armament (as far as I can see) consists of the following ordnance, viz.:—Two Whitworth rifle guns of 33 cwt. each. Four 8-inch smooth-bore guns, 55 cwt. each. Two 12-pounder smooth-bore guns, about 15 cwt. each.

"I have been unable to ascertain what amount of ammunition she has on board for these guns, nor have I been able to determine where her magazines are placed. I do not think they are abaft her engine-room, for her after-hold has been cleared, and there is no appearance of any magazine there. I observe that there were no small-arms, stands for small-arms, cutlasses or pistols, about any part of her decks; and as far as I could see, there appears to be a general unreadiness for action about her quarters. Shot-racks were not fitted, nor did I see any place I call the shell-room aloft; everything indicated that she was nothing more than an ordinary merchant-ship.

"I have used every exertion (but without success) to ascertain whether she has any larger guns stowed away below. I do not think she has, as her scantling would hardly allow her to carry more than I have already seen. There appears to be a mystery about her forehold, for the foreman of the patent slip, when asked to go down to that spot to measure her for the cradle, was informed he could not get to the skin at that place. The hatches were always kept on, and the foreman states that he was informed they had all their 'staff' there.

"As to her speed, I have been informed by competent judges that, taking her boiler power into consideration, she would not exceed an average of ten knots an hour under steam alone; whilst under sail she has every appearance of being very fast. There is nothing to protect her machinery from shot and shell; in fact, her boilers and the principal parts of her machinery are above the water-line. Her bunkers certainly are between the machinery and the ship's side, but from their small dimensions they would offer but small resistance to shot. The most vulnerable part, viz., the boilers, is left quite unprotected. She can carry a great quantity of coal, but in her bunkers she can only stow about 50 tons. Her daily consumption under full steam averages about 24 tons. She is fitted with a smoke-consuming apparatus, which appears to answer well, for I remarked when she first came up the bay but little smoke was emitted from her funnel. In her other qualities, I think she corresponds with the description given in 'Lloyd's Register' of another vessel which has a similar number and the same tonnage marked on her main beam, viz., No. 4,854 and 790 tons. She is built on the composite plan, having iron frames with wood planking, and appears to have been strongly built, but not more so than is usual for ships classed on the first deck for thirteen years.

"The state of the vessel on deck, aloft, and in the engine-room, I think both slovenly and dirty, and does not reflect any credit upon her officers.

"There appeared to me to be about forty to fifty men on board, slovenly, dirty, and undisciplined. I noticed also a great number of officers, and could not help remarking that the number appeared out of all proportion to the few men I saw on board. Without disparaging the Confederate war-steamer Shenandoah, I am altogether of opinion that there is nothing in her build, armament (with the exception of the Whitworth guns), and equipment that should call for more special notice than that she is an ordinary merchant-vessel, armed with a few guns.

"I have, &c.

(Signed) "CHARLES R. PAYNE."

The Consul of the United States at Melbourne had, on the Shenandoah's first arrival in the port, sent to Mr. Adams, in a letter dated 26th January, 1865, the following

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description of her, communicated to him (the Consul) by persons who had been on board of her as prisoners:—*

"She has the appearance of an ordinary merchant-ship, with a long full poop, a large bright wheel-house, oval skylights on the poop. She has one telescope funnel. The main topmast and top-gallant staysail both hoist from the mainmast head. She is wire-rigged."

"The officers declare it would not be safe to fire a broadside. It is the general impression that she is not a formidable vessel. She is leaky, and requires two hours' pumping out. The crew consists of seventy-nine, all told."

Her armament was stated by these persons to consist of "two unrifled 8-inch shot guns, two rifled 4-inch guns, and two ordinary 12-pounders, the original ship's guns."

By several persons who had been board of her, as prisoners or among her crew, it was sworn that only the two ordinary 12-pounder guns were used during her cruise in making prizes. By this was meant (as appears from the depositions themselves) that these guns were used in firing blank shots, to compel merchant-vessels to heave to. They do not appear to have been used in any other manner.

With respect to her crew it was sworn by one of the prisoners that he had heard her Captain say that he and his officers took charge of her at the Madeira Islands, and sailed thence with a crew of seventeen men. Another deponent (one Silvester, a seaman who had joined her from the Laurel and left her at Melbourne) stated on oath that, when she was left by the Laurel, her whole crew, including officers, numbered twenty-three persons. When she arrived at the port of Melbourne she had captured nine or more United States' merchant-ships, and her crew was largely increased by the addition of men who had joined her from those ships. Several men who had so joined her, and who left her at Melbourne, affirmed that they had been forced to take service in her against their will by threats and ill-usage.

On the 20th June, 1865, Earl Russell received the following letter from Mr. Mason, who had been residing in England during the war as an Agent of the Government of the Confederate States, though not officially recognized as such by Her Majesty's Government.

Mr. Mason to Earl Russell.†

"My Lord,

"28, Grove Street, Lewington, June 20, 1865.

"It being considered important and right, in the present condition of the Confederate States of America, to arrest further hostile proceedings at sea in the war against the United States, those having authority to do so in Europe desire as speedy as practicable to communicate with the Shenandoah, the only remaining Confederate ship in commission, in order to terminate her cruise.

"Having no means of doing this in the distant seas where that ship is presumed now to be, I venture to inquire of your Lordship whether it will be agreeable to the Government of Her Majesty to allow this to be done through the British Consuls at ports where the ship may be expected.

"I have the honour to inclose herewith a copy of the order it is proposed to transmit, and will be obliged if your Lordship will cause me to be informed whether, upon sending such orders unsealed to the Foreign Office they can be sent through the proper channels to the Consuls, or other representatives of Her Majesty at the points indicated, to be by them transmitted, when opportunity admits, to the officer in command of the Shenandoah. These points are Nagasaki in Japan, Shanghai, and the Sandwich Islands.

"I trust that your Lordship will, from the exigency of the occasion, pardon the liberty I have ventured to take, and will oblige me by having the inclosed copy returned to me.

"I have, &c.

(Signed) "J. M. MASON."

Inclosed in this letter was a paper signed "James D. Bullock," giving an account of the downfall of the Confederate Government and the cessation of the Civil War, and purporting to direct the Commander of the Shenandoah "to desist from any further destruction of United States' property upon the high seas, and from all offensive operations against the citizens of that country."

Mr. Mason was told, in reply, that Earl Russell "has no objection to sending this letter to the places mentioned, and also to Her Majesty's Colonial and Naval authorities, it being always distinctly understood that the Shenandoah will be dealt with in the Courts, if claimed, according to law."

Copies of the letter were sent accordingly to the Commander-in-chief of Her Majesty's ships on the China and Pacific Stations, and to Her Majesty's officers commanding on other naval stations, except the Mediterranean.

Reports having subsequently reached Her Majesty's Government from Washington, that the Shenandoah continued to capture and destroy United States' vessels after her Commander had received instructions that the war was at an end, it was ordered that instructions should be sent to Commanders of Her Majesty's ships of war, and to Governors of Colonies, that she should be seized, if found upon the high seas equipped for war; and if in a Colonial port, should be forcibly detained. It was further ordered, that, if so seized or detained, being equipped as a vessel of war, she should be delivered to the nearest authority of the United States, in a port or harbour of that country, or to an officer commanding a United States' vessel of war on the high seas.*

It was afterwards positively affirmed by the Commander of the Shenandoah, that, although up to the 28th June, 1865, he had continued to cruise and to make prizes, being then in the Arctic Sea and without news of what had occurred in America, he had, on receiving intelligence of the downfall of the Government by which he was commissioned, "desisted instantly from further acts of war," and shaped his course for the Atlantic Ocean.

On the 6th November, 1865, the Shenandoah arrived at Liverpool.† She was immediately placed under detention by the officers of Customs; and a party of men from Her Majesty's ship Donegal was put on board of her, to prevent her leaving the port. The gun-boat Goshawk was also lashed alongside of her, with orders that she should not be allowed to hoist anchor, nor to light her fires, nor hoist out any property that might be considered as belonging to the Government of the United States. On the Inspector-General of Customs going aboard of the ship, her Commander stated that she had come into port with the intention of delivering her up to Her Majesty's Government; and he, on the same day, wrote and sent to Her Majesty's Secretary of State for Foreign Affairs a letter which concluded as follows:—‡

"As to the ship's disposal, I do not consider that I have any right to destroy her, or any further right to command her. On the contrary, I think that as all the property of Government has reverted, by the fortune of war, to the Government of the United States of America, that therefore this vessel, inasmuch as it was the property of the Confederate States, should accompany the other property already reverted. I therefore sought this port as a suitable one wherein to 'learn the news,' and, if I am without a Government, to surrender the ship with her battery, small arms, machinery, stores, tackle, and apparel complete to Her Majesty's Government for such disposition as in its wisdom should be deemed proper."

Captain Waddell, in this letter, stated that the Shenandoah had been a ship of war under his command belonging to the Confederate States, and that he had commissioned her in October 1864 under orders from the Naval Department of the Confederate States, and had cruised in her in pursuance of his orders.

Mr. Adams, on being informed of the arrival of the Shenandoah at Liverpool, wrote as follows to the Earl of Clarendon, then Her Majesty's Secretary of State for Foreign Affairs:—§

Mr. Adams to Earl of Clarendon.

"My Lord,

"Legation of the United States, London, November 7, 1865.

"I have the honour to submit to your consideration the copy of a letter received by me from the Vice-Consul of the United States at Liverpool, touching the arrival, yesterday, of the vessel known as the Shenandoah at that port.

"Although necessarily without special instructions respecting this case, I do not hesitate to assume the responsibility of respectfully requesting Her Majesty's Government to take possession of the said vessel with a view to deliver it into the hands of my Government, in order that it may be properly secured against any renewal of the audacious and lawless proceedings which have hitherto distinguished its career.

"I perceive by the terms of the Vice-Consul's letter that some of the chronometers saved from the vessels which have fallen a prey to this corsair are stated to be now on board. I pray your Lordship that proper measures may be taken to secure them in such manner that they may be returned on claim of the owners to whom they justly belong.

"Inasmuch as the ravages of this vessel appear to have been continued long after she ceased to have a belligerent character, even in the eyes of Her Majesty's Government, it may become a question in what light the persons on board and engaged in them are to be viewed before the law. The fact that several of them are British subjects is quite certain. Whilst I do not feel myself prepared at this moment, under imperfect information, to suggest the adoption of any course in regard to them, I trust I may venture to hope that Her Majesty's Government will be induced, voluntarily, to adopt that which

* Appendix, vol. i, p. 657.

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† Ibid., p. 662

‡ Ibid., p. 667.

§ Ibid., p. 669.

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The Shenandoah. may most satisfy my countrymen, who have been such severe sufferers, of its disposition to do everything in its power to mark its high sense of the flagrant nature of their offences.

"I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

This letter, with other communications relating to the Shenandoah and her officers and crew, having been referred to the Law Officers of the Crown, they, on the same day (7th November, 1865), advised as follows:—*

"In obedience to your Lordship's commands, we have taken these papers into our consideration, and have the honour to report—

"That we think it will be proper for Her Majesty's Government, in compliance with Mr. Adams's request to deliver up to him, on behalf of the Government of the United States, the ship in question, with her tackle, apparel, &c., and all captured chronometers or other property capable of being identified as prize of war, which may be found on board her.

"With respect to the officers and crew, we observe that Mr. Adams does not demand their surrender to the United States' Government, and that the only question suggested by him is, whether they or any of them ought to be proceeded against, under the direction of Her Majesty's Government, for some offence or offences cognizable by British law. The only offence at which he distinctly points is that of violating the Foreign Enlistment Act, by taking part in hostilities on board of this ship: and, as to this, we think it would be proper if some of these men are, as he says, British subjects (by which we understand him to mean natural-born British subjects, for none others are within those provisions of the Act which relate to enlistment or acts of war out of this country), and if evidence can be obtained of that fact, to direct proceedings to be taken against those persons, under the 2nd section of the Foreign Enlistment Act, 59 Geo. III, cap. 69, before they have become dispersed, so as to escape from justice. If the facts stated by Captain Waddell are true, there is clearly no case for any prosecution, on the ground of piracy, in the Courts of this country; and we presume that Her Majesty's Government are not in possession of any evidence which could be produced before any Court or Magistrate for the purpose of contravening the statement or of showing that the crime of piracy has, in fact, been committed.

"We conceive that the substance of the foregoing observations may properly be embodied in the reply to be given to Mr. Adams, and we think it may not be amiss to add that, of course, Mr. Adams and his Government must be well aware that any proceedings in this country against persons in the situation of the crew of the Shenandoah (as against all others) must be founded upon some definite charge, of an offence cognizable by our laws and supported by proper legal evidence; and that Her Majesty's Government are not at present in a position to say whether such a charge, supported by such evidence, can or cannot be brought against any of the persons in question.

"With respect to any of the persons on board the Shenandoah who cannot be immediately proceeded against and detained, under legal warrant, upon any criminal charge, we are not aware of any ground on which they can properly be prevented from going on shore and disposing of themselves as they may think fit; and we cannot advise Her Majesty's Government to assume or exercise the power of keeping them under any kind of restraint.

"We have, &c.

(Signed) "ROUNDELL PALMER,
" R. P. COLLIER,
" ROBERT PHILLMORE."

On a subsequent reference, upon the following day, they again stated their opinion as follows:—†

"With respect to the question whether the officers and crew of the Shenandoah may now be permitted to leave the ship, and to go on shore, we have only to repeat the opinion expressed in our Report of yesterday's date, namely, that these persons being now in this country, and entitled to the benefit of our laws, cannot be detained except under legal warrant upon some criminal charge duly preferred against them in the ordinary course of law. If Her Majesty's Government are now in possession, or consider it probable that, if an information were laid before a magistrate, they would shortly be in possession of evidence against any of these persons sufficient to justify their commitment for trial, either upon any charge of misdemeanour under the Foreign Enlistment Act or upon the graver charge of piracy, we think it would be right and proper to take the necessary proceedings without delay, in order to have such charge duly investigated; but, at the present time, we are not informed of any such evidence in the possession or power of Her Majesty's Government by which such a charge would be likely to be established.

"We have, &c.
(Signed) "ROUNDELL PALMER,
" R. P. COLLIER,
" ROBERT PHILLMORE."

Instructions were thereupon sent to Captain Paynter, commanding Her Majesty's

* Appendix, vol. i, p. 670.

† Ibid., p. 673.

ship Donegal, who was in charge of the Shenandoah, that those of her officers and men who were not ascertained to be British subjects, either by their own admission or by the evidence of persons who knew them, should be allowed to quit the vessel with their personal effects. As to those who should be ascertained to be British subjects, inquiry was to be made whether evidence on oath could be obtained against them. Those against whom evidence could be obtained were to be detained and taken before a magistrate, the rest discharged.*

Captain Paynter reported, on the 8th November, that, on receiving these instructions he had gone on board the Shenandoah, and had ascertained that the crew were all shipped on the high seas. "I mustered the crew, and was fully satisfied that they were foreigners, and that there were none known to be British-born subjects on board; they were therefore all landed with their effects."†

Captain Paynter subsequently stated that his conclusion was formed partly on the assurances given him on board by the late Commander and officers of the ship, and partly by the answers returned by the men when mustered and questioned, one by one, on their general appearance, and on the absence of any evidence against them. He added that any men who were British subjects, and had formed part of her original crew, might have found means to make their escape whilst she was in the Mersey.‡

On this subject the following Report was made by the Lieutenant commanding the Goshawk:—§

Lieutenant Clerk to Captain Paynter.

"Sir,
"In compliance with your order calling on me to report the proceedings on board the Shenandoah during her detention at this port by the British authorities, I have the honour to inform you that, agreeably to instructions, dated 6th November, 1865, I proceeded in Her Majesty's gun-boat Goshawk, under my command, and landed her alongside the vessel.

"In the evening Captain Waddell informed me that, the vessel having been taken charge of by the Custom-house authorities, he considered himself, the officers, and crew relieved from all further charge and responsibility of the ship, and that his authority over the crew would also end.

"The following day (November 7) the crew requested that I would allow them to land, none of them having been on shore for more than nine months. I told them that under the circumstances it was not in my power to grant it, and persuaded them to remain quiet for a day or two, till orders could be received from London.

"They then demanded to see my authority for detaining them. I explained that I acted under orders from you. They replied that you could have no charge of them without instructions from Earl Russell, the Foreign Office, or the American Minister, as they were American subjects.

"This evening, as on the previous one, I succeeded in pacifying the crew by reasoning with them.

"On the following morning (8th November) the crew were getting riotous, and determined to remain on board no longer. Eight or ten had already deserted. I, therefore, in a letter to you, explained the excited state the crew were in, and that I had heard from one or two of their officers their determination to leave the vessel that evening at all risks. I should, therefore, be compelled to let them escape, or else detain them by force.

"The answer I received from you was, that I was to act up to your orders, and the crew were to remain on board, but that you hoped soon to have instructions from London.

"I would call your attention to the excited state of the crew by their conduct in attempting to desert, many of them jumping on board the steamer and trying to conceal themselves when you came to muster and examine them; on which occasion I accompanied you into the cabin and heard you question Captain Waddell as to whether he believed any of his crew to be British subjects: he replied in the negative, and stated that he had shipped them all at sea.

"On your questioning the officers, they also made the same statement.

"The First Lieutenant mustered the crew from a book of his own, the only list found on board, and you stopped and questioned the men as they passed before you.

"Each one stated that he belonged to one or other of the States of America.

"The personal baggage of the officers and crew was examined by the Custom-house officers to prevent any American property being taken on shore.

"On the evening of the 9th November you again came on board the Shenandoah, and met the American Consul in the cabin of a tug he had hired to bring him alongside; he then promised to send an officer to take charge of her, as a captured Confederate cruiser, on behalf of the American Government.

"On the 10th November, Captain Freeman came on board and took charge, under orders from the American Consul, and, in compliance with your memorandum, I handed the vessel and stores over to him.

"On my leaving the Shenandoah, Captain Freeman hoisted the American ensign and pendant, and proclaimed her a man-of-war.

"During the time I was on board I received no information, nor could I obtain any evidence, that

* Appendix, vol. i, p. 676.

† Ibid., p. 678.

‡ Ibid., p. 682.

§ Ibid., p. 712.

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"I have, &c.
(Signed) "ALE. CHEEK."

In order to justify the detention of any of the crew it was, by law, necessary to prove by evidence that the persons detained were natural-born British subjects. To allege that they were probably such would not have been sufficient, nor could they have been called upon to prove that they were not such. No evidence tending to prove the British nationality of any of the Shenandoah's crew was furnished or offered to, or was in the possession of, Her Majesty's Government or its officers before or at the time when the crew landed and dispersed. A deposition made by one Temple or Jones, a native of Madras, who stated that he had himself enlisted in the ship, and served in her throughout her cruise, was, on the 28th December—about seven weeks after the dispersion of the crew—sent to the Earl of Clarendon by Mr. Adams. It was clearly shown, however, that Temple was a person unworthy of credit, and some of the statements in his deposition were ascertained to be gross falsehoods. The crew of the Shenandoah, if Temple's evidence were to be believed, included Americans, Prussians, Spaniards, Portuguese, Danes, Malays, and Sandwich Islanders. About fifty men were stated by him to have joined her from United States' ships.

On the 10th November, 1865, the Shenandoah was delivered to, and accepted by, the Consul of the United States, and she soon afterwards sailed for New York.

Summary.

The Shenandoah was a steam-ship built, not for war, but for commercial purposes, and constructed with a view to employment in the China trade. She had been employed by her original owners in a trading voyage to New Zealand and China, and was, when she sailed from the port of London in October, 1864, registered in the name of a Liverpool merchant as sole owner.

She was not, within the jurisdiction of Her Britannic Majesty's Government, fitted out, armed, or equipped for war, in any manner or degree, nor in any manner or degree specially adapted, for warlike use. She appeared to be, and was in fact, by her construction, fittings, and in all other respects, at the time when she departed from the waters of the United Kingdom, an ordinary merchant-steamer, and not a ship-of-war. She had on board, at the time when she was owned and used as a trading vessel, two 12-pounder carronades such as are usually carried by vessels of her class for making signals; and these guns passed with the rest of the ship's furniture, when she was sold by her original owners, and remained on board when she sailed in October 1864. They were guns suitable for use in a merchant-vessel, and not for use in a ship of war. She cleared and sailed from the port of London as for an ordinary trading voyage, under her original name of the Sea King, by which she was known as a trading vessel. In her stores, and in the coals which she carried as cargo, as well as in her build and equipment, there was, as Her Majesty's Government believes, nothing that was calculated to excite, or did excite, in the minds of persons on board of her any suspicion that she was intended for a different purpose.

Her crew was composed of men who had shipped on board of her in the ordinary way, in the port of London, for a trading voyage. They were hired and signed Articles for a voyage from London to Bombay (calling at any ports or places on the passage), and any other ports or places in India, China, or Japan, or the Pacific, Atlantic, or Indian Oceans, trading to and from as legal freights might offer, until the return of the ship to a final port of discharge in the United Kingdom or Continent of Europe; the voyage not to exceed two years.

Before or at the time of her arrival at the Madeira Islands, she was sold by her owner to the Government of the Confederate States. Either on the high seas or in Portuguese waters she was transferred to an officer commissioned by the Government of the Confederate States, who then took possession and control of her; and the master, officers, and crew who had come out in her from England (three or four men only excepted) left her at that time, and returned to England. The three or four men who remained on board the ship were one of the engineers, a common sailor, and one or two firemen. They are stated to have enlisted when under the influence of liquor.

The Commander who had taken possession of the ship and his officers (who, like him, were Americans) employed the strongest inducements in order to persuade the ship's crew to enlist, by the offer of large bounties, by the promise of high wages and prize-money, by exhibiting money to them, and by lavish supplies of liquor. These inducements, however, were used in vain, except in the case of the three or four men above mentioned.

The ship was also joined by a few men who had come in the steamer Laurel. At the time when she commenced cruising, her whole crew, exclusive of officers, was from seventeen to nineteen men. The number of men who would commonly be shipped to work a vessel of her size as a merchant-ship would be from forty to fifty, which was the number that actually went out in her. As a ship of war she would require a larger number than that. It appears that before she arrived at the port of Melbourne her crew had been increased to a complement of from seventy to eighty men, exclusive of officers (who were about twenty) by the addition of men who joined her from captured American vessels.

The Commander and officers of the Shenandoah (excepting, as some deponents stated, one of the lieutenants, who had taken a passage in her from London as an ordinary passenger, concealing his purpose and official character) came on board of her, for the first time, after she had arrived near to a detached group of islands belonging to the Madeiras, and called the Desertas. They came out as passengers in the Laurel steamer, which cleared on the 8th October from Liverpool for a voyage to Matamoras and Havannah and Nassau. They took the control of the ship, and, by their orders, her guns (other than the two small 12-pounders above mentioned) and all her ammunition were put on board of her from the Laurel. These acts were done either within Portuguese waters or on the high seas. The vessel afterwards hoisted the Confederate flag and commenced cruising. Her Commander was a Lieutenant-Commander in the naval service of the Confederate States, appointed by the Naval Department of that Government to command the Shenandoah.

Of the vessels captured by the Shenandoah a considerable number were captured before she arrived at a British colony.

The earliest intelligence respecting the Shenandoah which reached Her Majesty's Government was received from Her Britannic Majesty's Consul at Teneriffe. Up to that time (that is, until the 12th November, 1864, five weeks after she left London) no representation respecting her had been made by Mr. Adams, and no information about her had been conveyed to or come into the possession of Her Majesty's Government.

Immediately on the receipt of the British Consul's Report, and before any representation had been made or information furnished by the Minister of the United States, Her Majesty's Government took the opinion of its legal advisers on the question whether legal proceedings could be instituted against Corbett, the master of the ship, for his share in the transaction, and the master was, in fact, indicted and brought to trial, but was acquitted by the jury, the evidence as to his acts being doubtful and conflicting.

The Commander of the Shenandoah on arriving in the port of Melbourne addressed to the Governor an application in writing, stating that she was a steamer belonging to the Confederate States, and asking for permission to make necessary repairs and obtain necessary supplies of coal. Permission was granted to him to remain in the waters of the colony a sufficient time for receiving the provisions and things necessary for the subsistence of the ship's crew, and for effecting needful repairs. The Commissioner of Trade and Customs for the colony was at the same time instructed to take every precaution in his power against the possibility that her Commander might attempt to augment her armament in any degree, or to render the armament which she possessed more effective. The officers of the Government were directed to attend to this, and to furnish daily reports of the progress made with the repairs and provisioning of the ship. Competent persons were appointed to ascertain whether repairs were really necessary and to report to the Governor on the subject, and these persons reported that she was not in a fit state to go to sea, and that repairs were necessary for which the vessel would have to be placed on a slip. The slip, though the property of the Colonial Government, was not under its control, but under that of a private person to whom it had been leased by the Government.

Permission to land from the vessel stores which she did not require for use was asked, but refused by the Governor, on the advice of his Law Officers.

The Commander of the ship was required to fix the earliest day on which she would be ready to sail, and to take his departure on the day so fixed; and she departed accordingly.

Three persons discovered to have gone on board the ship for the purpose of joining her crew were prosecuted and brought to trial. Two were punished, the third released without punishment by reason of his youth. A fourth was discharged, being found to

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be an American. These were the only persons who could be ascertained, before she left Melbourne, to have joined or attempted to join her; and her Commander gave his word in writing, as commander of the ship, that there were no persons on board of her except those whose names were on his Shipping Articles, that no one had been enlisted in the service of the Confederate States since his arrival, and that he had in no way violated the neutrality of the port.

It was not the duty of the Colonial Government to seize or forcibly search the Shenandoah whilst in the waters of the colony, nor could it have done so without transgressing the rules of neutrality and the settled practice of nations.

No personal communication took place between the Governor and the commander of the ship while she remained in the waters of the colony.

The discovery having afterwards been made that, notwithstanding the vigilance exercised by the officers of the Colonial Government, persons had been secretly put on board the ship during the night preceding her departure, notice of this was sent by the Governor to the Governors of the other Australian colonies and of New Zealand.

Her Britannic Majesty having subsequently received reports, which appeared to be worthy of credit, to the effect that the Shenandoah was continuing to capture and destroy merchant-vessels after her commander had been informed of the cessation of the civil war, gave directions that she should be seized in any port of Her Majesty's Colonial possessions, or on the high seas, and should be delivered over to officers of the United States. But the truth of these reports was positively denied by her commander on his arrival at Liverpool, and Her Majesty's Government has no reason to believe that the denial was untrue.

On arriving at Liverpool the vessel was secured by the officers of the Government, and was handed over to the Government of the United States, on the express request of Mr. Adams.

The crew were detained on board for some days by the officers of the Government. No evidence being within that time given, offered, or discovered against any of them, they were at the end of it suffered to land and disperse. More than six months had at this time elapsed since the end of the civil war.

The Shenandoah was at sea during more than twelve months, from the time at which her cruise began. She was never, so far as Her Majesty's Government is aware, encountered or chased by a United States' ship of war, and no endeavour to intercept or capture her appears to have been made by the Government of the United States.

Her Britannic Majesty's Government denies that, in respect of the Shenandoah, there was on its part any failure of international duty for which reparation is due from Great Britain to the United States.

PART IX.

Recapitulation of Facts previously stated.

The statements of fact which have been placed before the Arbitrators may be recapitulated as follows.

Of the four vessels in respect of which alone the United States have, up to this time, made claims against Great Britain, two—the Georgia and Shenandoah—were never, in any manner or degree, within the dominions of Her Majesty, fitted out, armed, or equipped for war, or specially adapted to warlike use. They were constructed and fitted in a manner suitable to merchant-ships. One of them—the Shenandoah—was not only built for a merchant-ship, but had been owned and used as such before she was purchased by the Government of the Confederate States; and her condition and equipment when she departed from Great Britain and when she came into the possession of the Government of the Confederate States, were, so far as appears, the same in all material respects as they had been when she was owned and employed as a trading vessel. This vessel, according to the evidence which has been brought to the knowledge of Her Majesty's Government, was sold and transferred to the Government of the Confederate States after she had departed from Her Majesty's dominions.

No information whatever respecting these two vessels respectively was conveyed to Her Britannic Majesty's Government by the Minister or Consular Officers of the United States, or came to the knowledge of that Government, until they had respectively departed from Her Majesty's dominions. Her Britannic Majesty's Government had no ground to believe or suspect that they or either of them were or was intended to be delivered to the Government of the Confederate States or its officers, or employed in cruizing or carrying on war against the United States. If the Minister or Consuls of the United States had any such grounds of belief or suspicion, they were not communicated to the Government of Her Britannic Majesty.

The other two vessels—the Alabama and Florida—though suitable, by their construction, for vessels of war, were not armed for war when they respectively departed from the waters of the United Kingdom. They had then no armament whatever, and they did not receive any until after they had arrived at places very remote from Great Britain, and out of the control of Her Majesty's Government.

As to one of these two—the Florida—no information supported by evidence proving, or tending to prove, that she was intended to cruise or carry on war against the United States, was conveyed to or received by Her Britannic Majesty's Government previously to her departure from the United Kingdom. On her first arrival in a British Colony this vessel was seized under the authority of the Governor, but was released, for want of proof, by the Decree of a Court of competent jurisdiction.

The Florida, before engaging in any operation of war, entered a port of the Confederate States. She remained there for more than four months; she there enlisted and shipped a crew, and was put in suitable condition for cruizing, and she was from thence sent out to cruise.

In the case of one vessel only—the Alabama—admissible evidence tending to prove the existence of an unlawful intention was furnished to Her Britannic Majesty's Government before the departure of the ship. This evidence was supplied little by little, the last instalment of it being delivered on the fourth day before her departure. She put to sea unregistered and without a clearance, under the pretence that she was about to make a trial trip and return to her moorings. The circumstances under which the evidence relating to this vessel was received, referred to the Legal Advisers of the Government, and by them considered and reported on, are stated in Part VI of this Case.

All the information furnished by Mr. Adams to Her Majesty's Government, as well in relation to the Alabama as in relation to each of the three other vessels hereinbefore specified, was referred by the Secretary of State for Foreign Affairs, with the utmost expedition, to the proper Departments of the Government, for inquiry, and in order that measures might be immediately taken, should occasion so require, for the due enforcement of the law. Inquiry was accordingly made in every case. In the cases of the Georgia and

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the Shenandoah, nothing could be done, since each of these vessels had already departed from Her Majesty's dominions. In that of the Florida no evidence of unlawful intention was or could be obtained whilst she was within the United Kingdom. In that of the Alabama, the persons having possession of the ship carried her to sea before the order for seizing her was given.

In estimating the reasonableness of the views acted upon by Her Majesty's Government as to the sufficiency of the information and evidence from time to time submitted to them respecting apprehended infractions of the law by the construction and equipment of warlike vessels for the service of the Confederate States, it is necessary throughout to bear in mind not only that the trade of shipbuilding is a great and important branch of industry, which Her Majesty's Government was not required by any international duty to place under restrictions unauthorized by law, and over which it was not justified in assuming any arbitrary control, but also that the principal firms of British shipbuilders had been for a long time in the habit of entering into contracts with foreign Governments in all parts of the world for the construction, equipment, and sale of ships of war: such contracts being privately negotiated, in the ordinary course of business, without any power on the part of the Government to inquire into or interfere with them. No presumption, therefore, as to the real destination of any such vessel would in any case arise from the mere fact of her having a warlike character, although she might be in course of building during a state of war between particular Powers, while others were at peace.

In the papers relating to the iron-clad rams at Liverpool, ample illustration will be found of the difficulties which were liable to arise from this state of things whenever it became necessary to prove the actual purpose for which a ship of this character was being constructed: difficulties which, in the end, rendered it ultimately advisable for Her Majesty's Government to pay a very large sum of money for the purchase of the rams rather than risk the uncertain result of a trial.

The four vessels above specified were procured from British ports, or purchased from British owners, by the persons comprising the *de facto* Government of the Confederate States through their agents, and passed into the possession and control of that Government. After possession had been so acquired they were respectively armed for war by the orders of that Government, were commissioned as ships of war, and were commanded and officered by American citizens holding commissions in its naval service.

The crews of these vessels were enlisted on the high seas or elsewhere out of the jurisdiction of Her Majesty's Government, and, in the case of the Florida, chiefly in a port of the Confederate States. They were composed partly of British subjects, whom the American officers induced by persuasion and by promises of reward to take service when at a distance from England. The solicitations of the American officers were sometimes successful in inducing British seamen to serve: sometimes they were exerted in vain. But the vessels were also manned to a considerable extent with Americans and others drawn from the crews of American ships captured by them; though it is right to add that, in the case of some of the latter class who left the Shenandoah at Melbourne, it was alleged that threats and ill usage had been employed in order to induce them to join.

These vessels, after having been armed for war, were received as vessels of war in the ports of Great Britain as well as in those of the other neutral countries visited by them. In British ports they were received on the same footing as in those of other neutral nations, and were allowed to repair and purchase supplies on the same conditions as armed vessels of the United States, without favour or partiality, careful precautions being employed to prevent any renewal or augmentation of their warlike force within British waters.

No serious endeavours to intercept or capture any of these vessels, during the times of their respective cruises, appear to have been made by the Government of the United States; and the losses inflicted by them would probably have been in great measure averted had reasonable activity and diligence been exerted by that Government and its officers for that purpose.

The general course of Her Britannic Majesty's Government throughout the war was governed by a strict regard for the obligations of neutrality and a sincere desire to fulfil them; and this is apparent as well from the facts which have been stated in relation to the four vessels above specified, as from the other facts stated in the earlier parts of this Case.

Thus it has been seen—

That, beside the Florida and Alabama, many other ships were believed and asserted by Mr. Adams to be fitting out in British ports for the purpose of carrying on war against the United States, and were made the subject of representations to Her Majesty's Government.

That in every case, without exception, the allegations of Mr. Adams were promptly

and carefully investigated; that in the greater number of cases Mr. Adams proved to be mistaken, the suspected ships being merely merchant-ships, built and fitted out with a view to a special employment, and not for war; that in all cases as to which reasonable evidence could be obtained, the suspected vessels were seized and proceedings instituted for the condemnation of them; that four were thus seized—the Alexandra, the two iron-clads, and the Canton or Pampero—and were prevented from being used for belligerent purposes; and one of them (the Alexandra), having been seized in England and restored by the verdict of a jury, was afterwards seized again in a British Colony.

That during the whole period of the war, which lasted for four years, no vessel armed for war was sent out or procured from British ports for belligerent use; and that of vessels specially adapted by construction for warlike use, two only, the Florida and Alabama, were so procured, in the manner and under the circumstances above described; whilst of these two one only, the Alabama, escaped and came into the possession of the Confederate Government without having undergone a seizure and trial.

Finally, it has been seen that the Government of Her Britannic Majesty, not content with carefully performing, to the utmost of its power, its recognized international obligations, overstepped on more than one occasion the actual limit of those obligations, for the sake of preventing anything whatever which might compromise, or be reasonably thought to compromise, its neutrality; and, in particular, that, in order to prevent vessels which had been armed or built for war within Great Britain from passing into the hands of a belligerent, a large expenditure was twice voluntarily incurred, much of it without any equivalent, in addition to the costs and charges occasioned by unsuccessful proceedings in Courts of Law.

PART X.

Remarks in conclusion.

Her Britannic Majesty's Government has now stated, for the information of the Arbitrators, the principal facts which it believes to be material to a just adjudication on the claims urged on the part of the United States. In so doing, Her Majesty's Government has been under the unavoidable disadvantage of having to meet a Case which has not yet been presented. When that shall have been done, and the claims of the United States shall have been clearly ascertained, Her Majesty's Government will avail itself of the opportunity which it will have, under Article IV of the Treaty, to submit to the Tribunal such additional or more ample statement of facts as may then appear to be necessary. It forbears also, until a comparison of the Cases submitted on both sides shall have shown what points are really in dispute between the two Governments, to enter into argument in support of its own position, and will, for the present, content itself with placing before the Tribunal the considerations which follow.

That vessels should, under whatever circumstances, have been procured from British ports for warlike use, and employed as belligerent cruisers against the United States (Great Britain herself being neutral), has been a subject of displeasure and regret to Her Britannic Majesty's Government. This regret is not removed by the facts—material as they undoubtedly are to a just appreciation of the question—that the vessels were obtained by means of artifice and concealment, which defeated the vigilance of the officers of the Government; that all of them, when they respectively departed from Her Majesty's dominions were wholly unarmed, and some of them constructed as mere merchant-ships, without any special adaptation for war; that they were few in number; and that the persons who gained possession and control of them, and by whom they were used for war, were themselves (as the Government of the United States has never ceased to maintain) American citizens. Circumstances such as these must greatly affect, in the judgment of any impartial person, the question as to the responsibility of the neutral Government; yet it is nevertheless true that the acts themselves (being such as, if done or authorized by the neutral Government, would have compromised its neutrality) had an inevitable tendency to disturb its relations with the belligerent against whom they were directed. Her Majesty's Government, therefore, has not hesitated to express its regret, frankly and publicly, to the Government of the United States, and has permitted the expression of it to be placed on record in the Treaty which has been concluded between the two Powers.

But the Government of the United States insists that it is entitled to satisfaction in money for claims which it asserts have arisen out of acts of these vessels—that is, out of operations of war carried on, by means of them, by the persons in possession of them for the time being. It is manifest that this contention is one which Her Britannic Majesty's Government, although animated by the most friendly feelings towards the United States, could not, with due regard for its own rights and those of neutral nations in general, consent to acknowledge, not believing it to be just. It is a claim of strict right, and can be supported only by clearly establishing that an international duty, owed by Great Britain to the United States, has been violated by Great Britain, and by showing further that an appreciable injury has accrued directly from this cause to the United States, for which Great Britain ought, in justice, to make reparation in money. It is for the Government of the United States, then, to substantiate these positions, to specify clearly the international duty or duties on which it relies, and to prove the violation of which it complains.

A charge of injurious negligence on the part of a sovereign Government, in the exercise of any of the powers of sovereignty, needs to be sustained on strong and solid grounds. Every sovereign Government claims the right to be independent of external scrutiny or interference in its exercise of these powers; and the general assumption that they are exercised with good faith and reasonable care, and that laws are fairly and properly administered—an assumption without which peace and friendly intercourse could not exist among nations—ought to subsist until it has been displaced by proof to the contrary. It is not enough to suggest or prove that a Government, in the exercise of a reasonable judgment on some question of fact or law, and using the means of information at its

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command, has formed and acted on an opinion from which another Government dissents or can induce an Arbitrator to dissent. Still less is it sufficient to show that a judgment pronounced by a Court of competent jurisdiction, and acted upon by the Executive, was tainted with error. An administrative act founded on error, or an erroneous judgment of a Court, may indeed, under some circumstances, found a claim to compensation on behalf of a person or Government injured by the act or judgment. But a charge of negligence brought against a Government cannot be supported on such grounds. Nor is it enough to suggest or prove some defect of judgment or penetration, or somewhat less than the utmost possible promptitude and celerity of action, on the part of an officer of the Government in the execution of his official duties. To found on this alone a claim to compensation, as for a breach of international duty, would be to exact, in international affairs, a perfection of administration which few Governments or none attain in fact, or could reasonably hope to attain, in their domestic concerns; it would set up an impracticable and therefore an unjust and fallacious standard, would give occasion to incessant and unreasonable complaints, and render the situation of neutrals intolerable. Nor, again, is a nation to be held responsible for a delay or omission occasioned by mere accident, and not by the want of reasonable foresight or care. Lastly, it is not sufficient to show that an act has been done which it was the duty of the Government to endeavour to prevent. It is necessary to allege and to prove that there has been a failure to use, for the prevention of an act which the Government was bound to endeavour to prevent, such care as Governments ordinarily employ in their domestic concerns, and may reasonably be expected to exert in matters of international interest and obligation. These considerations apply with especial force to nations which are in the enjoyment of free institutions, and in which the Government is bound to obey, and cannot dispense with the laws.

If the Tribunal should come to the conclusion that Great Britain has incurred any liability to the United States, the question will then arise what should be deemed the just measure and extent of that liability. Her Britannic Majesty's Government abstains at present from entering into that question, and will reserve such observations as may be fitly offered in relation to it on the part of Great Britain to a later stage of the proceedings. Here it is sufficient to remark that a claim on the part of a belligerent to be indemnified at the expense of a neutral for losses inflicted or occasioned by any of the ordinary operations of war, on the plea that those operations were assisted or facilitated by negligence on the part of the neutral Government, is one which involves grave considerations and requires to be weighed with the utmost care. Losses of which such negligence is the direct and proximate cause (and it is in respect of such only that compensation could justly be awarded) are commonly not easy to separate from those springing from other causes. Success in warlike operations is generally due not only to the force possessed, but to the skill and courage exerted, by the successful combatant. If claims of this nature were to be freely admitted, a belligerent might demand to be indemnified by the neutral against consequences fairly attributable, in part or altogether, not to the fault of the latter but to his own want of capacity and enterprise. Her Majesty's Government has been compelled to point out that in respect of the vessels to which the foregoing statement relates there was, on the part of the Government of the United States or its officers, an extraordinary remissness in using the naval forces at their disposal, and that if ordinary activity had been exerted in the endeavour to intercept and capture these vessels, the losses of which the United States now complain would probably have been in great measure averted. It cannot be consistent with any reasonable view of international obligations that a belligerent State, alleging itself to be aggrieved by some imputed negligence of a neutral Government, should on that account claim indemnity from the neutral for losses in the course of warlike operations which it has not actively and diligently exerted itself to prevent or arrest.

It was the constant aim of Her Britannic Majesty's Government throughout the war to observe with fidelity and exactness the obligations, and to maintain unimpaired the rights, which the law and practice of nations have assigned to neutral Powers. In upholding those rights all the nations of the world are interested; and it was the duty of Great Britain, as a maritime Power of the first order, brought by circumstances into closer contact with the war than any other State, to resist on the one hand any encroachment on them, and to abstain on the other from any attempt to extend them beyond the just and expedient limits traced out by international law. Her Majesty's Government has given the best proof of its sincerity in these respects, as well as its earnest desire to promote the peaceful and amicable settlement of international differences, by proposing and agreeing to refer to the judgment of impartial Arbitrators the question whether, in the matters complained of by the United States, it has failed to discharge any international duty. In deciding on the questions submitted to it, the Tribunal will be called upon to apply to

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remarks.

them principles and considerations of wide application, not confined to maritime neutrality, nor to the acts and conduct of maritime nations alone. Great Britain is prepared to accept the award, whether favourable or unfavourable to her. She desires only that it shall be just. She claims only that it shall be founded on a true and equitable interpretation of the law of nations, and on principles which she herself and all other Powers may be satisfied, whether as neutral or as belligerent, to acknowledge and abide by in time to come.

(Signature)

KONSERViert DURCH
OSTERREICHISCHE FLORENZHILFE
WIEN

